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THE
**UTTAR PRADESH
LOCAL ACTS**
1836-1955
(ANNOTATED)

with
Rules, Notifications and Orders, etc.

by
Syed Mohammad Husain,

Advocate,

Author of "Law relating to Evacuee Property in India",
"Law of Court Fees in U. P.", "Commentaries on U. P.
Control of Rent and Eviction Act", "U. P.
Panchayat Raj Act", "U. P. Zamindari
Abolition & Land Reforms Act" &
"U. P. Municipalities Act" etc.,

SECONED EDITION

VOL. I

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PREFACE

The first edition of the book was exhausted soon after its publication. I had no idea while writing the book that it would receive such a staggering appreciation, as would encourage me to write the second edition, so soon after its publication.

In deciding a case viz *Dodda Subbareddi v. Guntur Goveindareddi* (1955 Andhra 49) Umamaheshwaram, J, observed at the close of the judgment :

"It is the bounden duty of the members of the bar and the judges who administer the law to keep themselves informed of the march and progress of law i. e., statutory and case-law."

The law is marching, not slowly but with rapid strides. The change in the political and social set-up of the country has necessitated drastic changes in the old law enacted with a different view and under different considerations. This necessity is met by numerous amendments in the existing law or by fresh legislation. My attempt has been to assimilate all the various amendments, and the new legislation in the Local Acts, with such commentary as may include all the decisions upto-date, so that the duty cast upon the members of the bar and the bench may be fully discharged.

In this second edition of the book, I have tried in my own way to make it as useful as could be expected from me. The appreciation that a book gets from the public decides its usefulness, and for this I have yet to wait. In view of the appreciation of the first edition, I am however compelled to believe in the usefulness of the second edition, which has been considerably enlarged by the addition of more useful notes and case-law.

I shall be failing in my duty if I do not express my obligation to Shri Prakash Lal of the Eastern Book Company, whose untiring efforts were helpful in incorporating all the amendments in the book.

The preface would be incomplete if no reference is made to Ch. Mohammad Sarwar, a leading vakil of Rae Bareli. He is an embodiment of concentrated energy and provides an incentive for work. He can do each work and every work, however difficult it may be, and for this his closest friends have awarded him a nick name. His untiring demands forced me to write this second edition and I think he well deserves the reader's obligations also.

SYED MOHAMMAD HUSAIN

111, Golaganj

Lucknow

6th September, 1955

CONTENTS

Act in Alphabetical Order

Serial No.	Act	Pages
	A	
1. Abolition of Zare Chaharum Act, XXX of 1951	...	1
2. Accommodation Requisition Act, XXV of 1947	...	4
3. Acquisition of Property (Flood Relief) Act, XXXIX of 1941	..	9
4. Aerial Ropeways Act, I of 1922	...	123
5. Agra University Act, VIII of 1926	...	15
Agra University—Statutes	..	39
Notifications	..	56
6. Agricultural Income-Tax Act, III of 1949	...	59
Agricultural Income-Tax Rules, 1949	...	86
Notifications	..	118
7. Agriculturist's Loans Act, XII of 1884	..	120
8. Agriculturist's Relief Act, XLII of 1948	..	140
Rules made under Agriculturists' Relief Act	..	196
9. Agricultural Tenants (Acquisition of Privileges) Act X of 1949	..	205
10. Agricultural Tenants (Acquisition of Privileges) (Amendment) and Miscellaneous provisions Act, VII of 1950	..	220
11. Agricultural Tenants (Acquisition of Privileges) Amendment and Miscellaneous Provisions Act, XXIII of 1951	..	223
12. The Aligarh Muslim University Act No. XL of 1920	...	225
Do First Statutes	..	238
13. The Allahabad University Act, No. III of 1921	..	258
14. The Almora Honorary Assistant Collector's Decrees and Orders Validating Act, No. XI of 1938	..	288
15. Appropriation Act, No. XVII of 1951	..	288
16. Appropriation (Supplementary) Act No. VI of 1951	..	289
17. Appropriation (Second Supplementary) Act No. VIII of 1951	..	290
18. Appropriation Act No. XIII of 1951	..	291
19. Appropriation (Supplementary) Act No. XXIV of 1951	..	292
20. Appropriation (Second Supplementary) Act No. II of 1952	..	293
21. Appropriation (Vote on Account) Act No. III of 1952	..	294
22. Appropriation Act No. XIX of 1952	..	294
23. Appropriation (First Supplementary 1952-53) Act No. XXVI of 1952	..	295
24. Appropriation (Second Supplementary 1952-53) Act No. XI of 1953	..	296
25. Appropriation Act No. XII of 1953	..	297
26. Appropriation (First Supplementary 1953-54) Act No. I of 1954	..	298
27. Appropriation (Second Supplementary 1953-54) Act No. III of 1954	..	299
28. Appropriation Act No. IX of 1954	..	300
29. Appropriation (First Supplementary 1954-55) Act No. XIX of 1954	..	301

<i>Serial No.</i>		<i>Pages</i>
30.	Appropriation (Second Supplementary 1954-55) Act No. IV of 1955	.. 302
31.	Appropriation Act No. X of 1955	.. 302
B		
32.	Badrinath (Sanitation and Improvement) Act Vo. V of 1945	303
33.	Badrinath Temple Act No. XVI of 1939	.. 307
	Shri Badrinath Temple Rules—1940	.. 318
34.	Banaras Family Domains Act No. III of 1904	.. 328
	Banaras Family Domains Act, 1940—Rules	.. 331
35.	Banaras Hindu University Act No. XVI of 1915	.. 335
	Do Statutes	.. 346
36.	Bengal, Agra and Assam Civil Courts Act No XII of 1887	.. 371
37.	Bengal Indigo Contracts Act No X of 1836	.. 383
38.	Bengal Regulation Repealing Act No. XII of 1938	.. 385
39.	Bhoodan Yagna Act No. X of 1953	.. 387
	Rules Made under the Bhoodan Yagna Act, 1953	.. 394
40.	Board of Revenue Act No. XII of 1922	.. 404
41.	Boad of Revenue (Declaration of Procedure & Validation) Act No. XXX of 1953	.. 414
42.	Borstal Act No. VII of 1938	.. 416
43.	Bundelkhand Alienation of Land Act No. II of 1903	.. 426
	Rules made under the Bundelkhand Alienation of Land Act 1903	.. 438
44.	Bundelkhand Encumbered Estates Act No. I of 1903	.. 441
	Rules made under the Bundelkhand Encumbered Estates Act, 1903	.. 457
C		
45.	Canning College Act No VII of 1922	.. 460
46.	Canning College and British Indian Association Contribution Act No IV of 192 ^{1/2}	.. 462
47.	Cantonments (Control of Rent and Eviction) Act No. X of 1952	.. 465
48.	Cattle Trespass (U. P. Amendments) Act, No. VII of 1954	.. 475
49.	Charitable Endowments (Extension of Powers) Act No. XX of 1950	.. 476
50.	Charitable Endowments (U. P. Amendment) Act No. XXXVII of 1952	.. 478
51.	Children Act No. I of 1952	.. 479
52.	Cinematograph (United Provinces Amendment) Act No. VII of 1942	.. 509
	Cinematograph Rules, 1951	.. 510
53.	Civil Courts Amins Act, No. XII of 1856	.. 530
54.	Civil Judges (Designation) Act No. IV of 1936	.. 532
55.	Civil Laws (Reforms And Amendment) Act No XXIV of 1954	.. 534
56.	Code of Civil Procedure(U. P. Amendment) Act No. XXXV of 1948	.. 544
57.	Code of Criminal Procedure (U. P. Amendment) Act No. IX 1940	.. 546

<i>Serial No.</i>	<i>Pages</i>
58. Code of Criminal Procedure (U. P. Amendment) Act, XXXVI of 1948	... 546
59. Code of Criminal Procedure (U. P. Amendment) Act, XLVI of 1948	... 548
60. Code of Criminal Procedure (Uttar Pradesh Amendment) Act, No. VIII of 1949	... 550
61. Code of Criminal Procedure (Uttar Pradesh Amendment) Act No. XXVIII of 1951	... 552
62. Collection of Municipal and other Taxes Act, No. II of 1898	... 553
63. The Commutation of Rent (Regularisation of Proceedings) Act No. XIV of 1962	... 554
64. Consolidation of Holdings Act No. V of 1954 Consolidation of Holding Rules, 1954	... 557 ... 582
65. Contingency Fund Act, XIX of 1950	... 641
66. Control of Rent & Eviction Act, III of 1947 Control of Rent & Eviction Rules	... 643 ... 720

THE UTTAR PRADESH LOCAL ACTS



THE U. P. ABOLITION OF ZARE CHAHARUM ACT, 1951 (U. P. ACT No. XXX OF 1951)

CONTENTS

- | | |
|--|---|
| 1. Short title, extent and commencement. | in respect of other matters. |
| 2. Definition. | Suits in respect of liability incurred after August 25, 1951 to be abate. |
| 3. Abolition of the Custom of Zare Chaharum. | Right to enhance rent by suit. |
| 4. Right to Zare Chaharum to be void. | Order 2, Rule 2, C. P. C. not a bar to enhancement of rent under Section 7. |
| 5. Agreement etc. to remain in force | Penalty. |

AUTHORITATIVE ENGLISH TEXT OF THE UTTAR PRADESH ZARE CHAHARUM UTSADAN ADHINIYAM, 1951

AN ACT

for abolition of the custom of Zare Chaharum

Whereas it is expedient to provide for the abolition of the custom of Zare Chaharum;

It is hereby enacted as follows:

Prefatory Note.—For Statement of Objects and Reasons, please see *U. P. Gazette (Extraordinary)*, dated August 27, 1951.

Passed in Hindi by the Uttar Pradesh Legislative Assembly on September 6, 1951, and by the Uttar Pradesh Legislative Council on September 11, 1951.

Received the assent of the President on November 7, 1951, under Article 201 of the Constitution of India and was published in the *Uttar Pradesh Gazette Extraordinary*, dated November 24, 1951.

1. **Short title, extent and commencement.**—(1) This Act may be called the U. P. Abolition of Zare Chaharum Act, 1951.

(2) It extends to the whole of Uttar Pradesh.

(3) It shall come into force at once.

2. **Definition.** In this Act unless there is anything repugnant in the subject or context—

(a) “Zare Chaharum” means the right by whatever name known and whether based on custom or contract, of the landlord to receive a share or portion of the purchase price upon the sale of a house or building.

Explanation I.—“Sale” includes foreclosure or sale in execution of a decree.

Explanation II.—“Landlord” means the zamindar or proprietor of the land occupied by house or other building.

(b) Rent includes Ghardwari and Parjoti.

Zare Chaharum.—It was a well recognised and established custom in the State that the proprietor or zamindar was entitled to one-fourth of the price on sale of a grove or a house by the Riyaya.¹ It was mostly recorded in Wajib-ul-arz, and was popularly known as Haq-i-Chaharum. Sub-section (a) of Section 2 defines this as “Zare Chaharum,” and includes the right of the landlord to receive any portion of the price, based, not only on custom, but also on contract, upon the sale of a house or building. The meaning of “sale” have been extended to include foreclosure or sale in execution of a decree. This is in recognition of decisions that the custom of Zare-Chaharum applied to court sales,² and to sales by foreclosure as well.³

Ghardwari-Meaning.—It means a tax levied from house-holders and shopkeepers. It is the same thing as Gharghauna, or a ground rent levied on the occupants of the village under the terms of a Wajib-ul-arz.⁴

Parjoti-Meaning.—Parjoti means ground rent levied on houses. It is recoverable from the inhabitants of the village under a custom, and is not cess but ground rent.⁵

3. Abolition of the custom of Zare Chaharum.—It is hereby declared that notwithstanding anything in any Wazib-ul-arz, agreement, judgment, decree or order of a court, or any other document, the custom of Zare Chaharum shall be and is hereby abolished with effect from the 25th day of August, 1951.

Scope.—This section abolishes the custom of Zare Chaharum on 25th August, 1951, whether it is based on Wajib-ul-arz, agreement, judgment, decree or order of the court or any other documents. No landlord shall be entitled to realise Zare-Chaharum on transactions made after 25th August, 1951. This however would not affect transactions prior to that date.

4. Right to Zare Chaharum to be void.—Notwithstanding anything contained in any custom, agreement, or other document, no person shall, in respect of any sale made on or after the 25th day of August, 1951 be entitled to realise on account of Zare Chaharum, whether from the seller or the purchaser, any share or portion of the purchase price of any house or building on land of which he is the landlord and any agreement for the payment of any such share or portion shall to that extent but no more be void with effect from the day aforesaid.

Scope.—This section is the natural result of the abolition of the custom of Zare-Chaharum. Any agreement made after 25th August, 1951 under which a landlord becomes entitled to get any sum by way of Zare-Chaharum would be void. It would, however, not affect the transaction of sale, which would be binding between the parties, except for the payment of Zare-Chaharum. The portion of the purchase money set apart for payment to the landlord, Zare-Chaharum would be realisable by seller from the purchaser as part of the consideration.

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| <ol style="list-style-type: none"> 1. <i>Kedar Nath v. Datta Prokash</i>, 20 A L J 648=44 A 739=1922 A 370. 2. <i>Rudhey Shiam v. Nazir Husain</i>, 1941 R D 469=1941 O W N 291, <i>M. Abdul Hushim v. Mahant Malik Arjun</i>, 1941 R D 962. See also 1941 R D 835. | <ol style="list-style-type: none"> 3. <i>Manni Lal v. Gauri Shankar</i>, 1938 R D 815. 4. <i>Balwant Singh v. Shankar</i>, 30 A 235 =5 A L J 361. 5. <i>Faiyaz Ali v. Behari</i>, 40 A 56 (F B) =15 A L J 873=45 I C 329. |
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5. Agreement etc. to remain in force in respect of other matters.—Where by reason of Section 4 any promise for the payment of any amount by way of Zare Chaharum has become void, the document containing the agreement shall, except to the extent aforesaid not thereby become void, any law to the contrary notwithstanding.

Scope.—This section has to be read along with Section 4. It makes it clear that if there is any agreement in any document e. g., deed of sale, for the payment of any amount as Zare Chaharum, the agreement would be void, but it would not affect the document, and it would be effective and shall be prevailed according to its tenor.

6. Suits in respect of liability incurred after August 25, 1951 to be abate.—Notwithstanding anything contained in any law for the time being in force all suits, applications or proceedings for the recovery of any amount on account of Zare Chaharum in respect of a sale made on or after the 25th day of August, 1951 shall abate and be dismissed but the cost shall be in the discretion of the court.

Scope.—This section deals with suits, applications or proceedings for the recovery of Zare Chaharum. These shall abate and be dismissed if they relate to sales made on or after 25th August, 1951. The costs, of course, shall be in the discretion of the court.

7. Right to enhance rent by suit.—(1) Notwithstanding anything contained in any contract or custom, it shall be lawful for landlord of any land in relation to which a right of Zare Chaharum existed on the 24th day of August, 1951, to enhance by suit the rent payable therefor on the day aforesaid :

Provided firstly that the enhancement is not more than 33-1/3 per centum of such rent :

Provided secondly, that no enhancement shall be allowed if the landlord is provided to have at any time realized any amount on account of Zare Chaharum in respect of any house or a building standing on the land.

(2) Where rent payable for any land has been enhanced under sub-section (1), it shall not be enhanced a second time until the period of thirty-three years has expired from the date on which the enhancement takes effect.

Enhancement of Rent.—The right of a landlord to obtain Zare Chaharum has been abolished from 25th August, 1951. This section compensates him for this loss, by permitting him to enhance the rent of land, if a right of Zare Chaharum existed prior to that date with respect to that land on the following conditions :—

- (a) The enhancement shall not be more than 33-1/3 per centum of the rent.
- (b) No enhancement shall be made for the second time until the expiry of 33 years from the first enhancement.
- (c) No enhancement shall be made if Zare Chaharum has been realised; at any time with respect to the land.

No rent—Effect.—There may be cases where no rent is realised from Riyayas with respect to the land on which their houses exist, and they may be numerous. This section makes provisions for the enhancement only and not for fixation of rent, and as such the landlords who have not charged any rent their Riyayas so far would not be entitled to get any rent for their lands, and would be deprived of Zare Chaharum as well. It is not clear in the Act, how these landlords are to be compensated for the loss of their rights. It seems that they are deprived of their rights to get Zare Chaharum without any compensation being paid to them, and may invite the application of Article 31 of the Constitution of India.

8. Order 2, Rule 2, C. P. C. not a bar to enhancement of rent under Section 7.—Nothing in Order 2, Rule 2 of the Code of Civil Procedure, 1908, shall be deemed to preclude the landlord from bringing a suit for enhancement of rent under sub-section (1) of Section 7 by reason merely of the institution of the suit referred to in Section 6.

Scope.—This section saves the right of a landlord in case his suit for recovery of Zare Chaharum abates under Section 6. The abatement or dismissal of his suit for recovery of Zare Chaharum would not have any effect on his right to enhance the rent under Section 7.

9. Penalty.—Whoever shall receive any amount on account of Zare Chaharum in respect of a sale made on or after the 25th day of August, 1951, shall be punishable with fine which may extend to twice the amount so levied or received and out of the fine realized the court may direct that such portion not exceeding the amount paid by the seller or purchaser shall be refunded to the seller or, the purchaser, as the case may be.

THE [UTTAR PRADESH] (TEMPORARY) ACCOMMODATION REQUISITION ACT, 1947

(U. P. Act No. XXV OF 1947)

CONTENTS

- | | |
|--|---|
| 1. Short title, extent, commencement and duration. | 11. Execution of order in case of non-compliance. |
| 2. Definition. | 12. Power of entry and inspection. |
| 3. Power of Requisition. | 13. Effect of Provision inconsistent with other enactments. |
| 4. Service of Order. | 14. Protection of action taken under the Act. |
| 5. Compensation by agreement. | 15. Cognizance of Offences under the Act. |
| 6. Reference to court. | 16. Orders not to be questioned in any court. |
| 7. No appeal or Revision against the order of the court. | 17. Rule making powers. |
| 8. Release from Requisition. | 18. Continuance of Orders. |
| 9. Penalty. | |
| 10. Power to order repairs. | |

Passed by the [Uttar Pradesh] Legislative Council on September 20, 1947 and by the [Uttar Pradesh] Legislative Assembly on November 15, 1947.

[Received the assent of the Governor General on December 15 1947, under Section 76 of the Government of India Act, 1935, as adopted by the India (Provisional Constitution) Order, 1947, and was published in [Uttar Pradesh] Government Gazette (Extraordinary) dated December 15, 1947].

AN ACT

to provide, during a limited period, for powers to requisition accommodation.

Whereas by reason of shortage of accommodation in the [Uttar Pradesh] which has become very acute due to the large influx of Refugees, it is expedient to provide, during a limited period, for powers to requisition accommodation.

It is hereby enacted as follows :—

Prefatory Note.—The following extract from the Statement of Objects and Reasons may be usefully noticed :—

"The shortage of accommodation, which was already acute in the [Uttar Pradesh] has become more acute now because of the large influx of refugees. Government at present do not exercise any powers for requisitioning accommoda-

tion except for storage of foodgrains. To provide accommodation for the refugees who are still arriving in thousands, and for other essential demands, it is necessary that the [State] Government provide for such powers. The [Uttar Pradesh] (Temporary) Accommodation Requisition Bill, 1947 is, therefore, being introduced." *vide* Notification No. 3926/XXIX-B (D-4) 25-47, dated September 9, 1947 in U. P. Government Gazette (Extraordinary), dated September 9, 1947. For Proceedings of the Legislative Council see Vol. IX, pp. 429 and 803-802. For Proceedings of the Legislative Assembly see Vol. XI.III, p. 179.

1. Short title, extent, commencement and duration.—(1) This Act may be called the [Uttar Pradesh] (Temporary) Accommodation Requisition Act, 1947.

(2) It extends to the whole of the [Uttar Pradesh].

(3) It shall apply to such areas as the [State] Government may, from time to time, by notification in the Official Gazette direct.

(4) It shall come into force at once.

(5) It shall cease to have effect on the expiry of September 30, 1958 except as respects things done or omitted to be done before the expiration thereof, and Section 6 of the U. P. General Clauses Act, 1944, shall apply upon the expiration thereof as if it had been repealed by an Uttar Pradesh Act.

Legislative changes.—This Act was continued up to September 30, 1949 in the first instance *vide* Notification No. R-5855/G. E. O.-40, dated September 2, 1948 published in Extraordinary Gazette, dated September 25, 1948. It was again continued up to September 30, 1952 first by Ordinance No. IV of 1949 and subsequently by Section 2 of U. P. Act XIII of 1950 *vide* Extraordinary Gazette, dated March 16, 1950, p. 5. It was again continued up to September 30, 1954 *vide* U. P. Act No. XXII of 1952 and then up to September 30, 1958 *vide* U. P. Act XV of 1954.

The words [Uttar Pradesh] and [State] were substituted for the words [United Provinces] and [Provincial] by A. O. 1950 throughout the Act.

In Sub-section (5) the words [expiry of September 30, 1958] were substituted for the words [expiration of one year from October, 1, 1947 or if the Provincial Government so directs by notification in the Official Gazette, on the expiration of two years beginning with that date] by Section 2 of U. P. Act XIII of 1950.

Extension.—Section 1 (5) as originally passed authorised the State Government to direct the extension of the life of the Act for a further period of one year after the expiry of the one year fixed by the Act. This power of the State Government was challenged on the ground that the Legislature could not abdicate its functions in favour of any other person or body. It was, however, held that the section merely authorised the State Government to direct the extension of the life of the Act, and was not *ultra vires*.¹

2. Definitions.—In this Act unless there is anything repugnant in the subject or context—

(a) "Accommodation" means any building or part of a building and includes—

(i) the garden grounds and outhouses, if any, appertaining to such building or part of a building, and

(ii) any furniture supplied by the owner for use in such building or part of a building.

(b) "Court" means the Court of a Munsif or Civil Judge, or where there is no Civil Judge the District Judge, who would have jurisdiction to hear and decide a suit for

1. *Murari Lal Solan v. D. M. Musaffarnagar*, 1955 A 48-1954 A L J 711 (F B).

eviction of a tenant from accommodation in respect of which the question arises ;

- (c) "District Magistrate" includes an Additional District Magistrate.
- (d) "Occupier" means a person in actual occupation of the accommodation.
- (e) "Owner" includes a mortgagee in possession, trustee, receiver or guardian.

Accommodation.—This definition is very much similar to the definition of "accommodation" given in the U. P. (Temporary) Control of Rent and Eviction Act. It not only includes buildings or part of buildings but also garden grounds, outhouses and furniture used in such buildings or part of building.

Occupier.—Has been defined to mean a person in actual occupation of the accommodation. This means that if any person occupies an accommodation, whether he be the owner or the servant of the owner, then the accommodation cannot be requisitioned unless an alternative accommodation has been provided. If an owner is temporarily absent leaving his servants in the house, he is in its actual occupation. Actual occupation does not mean occupying it personally. Occupation is just the same as possession.²

3. Power of requisition.—If in the opinion of the District Magistrate it is necessary to requisition any accommodation for any public purpose he may, by order in writing, requisition such accommodation and may direct that the possession thereof shall be delivered to him within such period as may be specified in the order; provided that the period so specified shall not be less than 15 days from the date of the service of the order :

Provided also that no building or part of a building exclusively used for religious worship shall be requisitioned under this section :

[Provided further that no accommodation which is in the actual occupation of any person shall be requisitioned unless the District Magistrate is further of the opinion that suitable alternative accommodation exists for his needs or has been provided to him.]

Legislative changes.—The second proviso was substituted for the present proviso by Section 3 of U. P. (Temporary) Accommodation Requisition (Amendment) Act (U. P. Act XIII of 1950).

Public purpose.—It has not been defined in the Act. It means a purpose which is to the benefit of the community in general.³ In the words of Lord Dunedin, "Whatever it may mean, it must include a purpose, that is, an object or aim, in which the general interest of the community, as opposed to particular interest of individuals is directly and vitally concerned".⁴ The rehabilitation of refugees is a purpose which cannot but be described as a public purpose.⁵

District Magistrate—Power.—A District Magistrate has been empowered to requisition any accommodation for any public purpose. His decision both about the purpose, and the need for which the accommodation is requisitioned is final unless it is proved that he acted *mala fide*.⁶ The section does not require the District Magistrate to make a judicial approach; he is under no obligation to call for objections, to take evidence and to give a hearing.⁷ He cannot, however, requisition a building or part of a building exclusively used for religious worship, nor can he requisition an accommodation in the actual occupation of any

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| <ol style="list-style-type: none"> 2. <i>Smt. Rani Prabhavati Devi v. D. M.</i>
Allahabad, 1952 A W R 241 (H C). 3. <i>Sri Ram Chandra v. The D. M.</i>
Aligarh, 1952 A W R 576-1952 A
520. 4. <i>Humabai Framjee Patil v. Secretary</i> | <ol style="list-style-type: none"> of State 5. <i>Ram Chandra v. D. M. Aligarh.</i>
1952 A 520. 6. <i>Ibid.</i> 7. <i>Smt. Prabhavati Devi v. D. M.</i>
Allahabad, 1952 A 833. |
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person unless he is of the opinion that suitable alternative accommodation exists for his needs or has been provided to him. He has also to provide in the order a period of fifteen days from the date of the service of the order for delivering of possession of the accommodation to him. He cannot, in any case, requisition an accommodation situated in a Cantonment area.⁸

Religious Worship.—The first proviso to Section 3 lays down that no building or part of a building exclusively used for religious worship shall be requisitioned. It does not lay down that only buildings or part of buildings where public go for worship is excluded from requisition. Whether public or private, if a part of a building is used exclusively for religious worship it cannot be requisitioned.⁹

Alternative Accommodation.—The second proviso to Section 3 lays down that no accommodation, which is in the actual occupation of any person shall be requisitioned unless the District Magistrate is of opinion that suitable alternative accommodation exists for his needs or has been provided to him. If the District Magistrate overlooks these provisions, he does not act in accordance with law and within the ambit of the authority conferred upon him by the Act. His order would be invalid.¹⁰

4. Service of order.—The order of requisition shall be served on the owner as well as the occupier, if any, of the accommodation by delivering to such owner or occupier a copy of the order, but where the owner or the occupier is not readily traceable and the order cannot be served without undue delay, or where the ownership is in dispute or cannot be easily ascertained, the order shall be served by publication in the Official *Gazette*, and by affixing a copy thereof on any conspicuous part of the accommodation.

Scope.—This section lays down the mode of service of notice. It is to be noted that the order has to be served not only on the owner, but also on the occupier, i. e., the person in actual occupation of the accommodation.

5. Compensation by agreement.—The District Magistrate shall pay to the owner of the accommodation requisitioned by him such compensation, either in a gross sum of money, or by periodical payments, as may be agreed upon between him and the owner.

6. Reference to Court.—(1) Where no agreement as specified in Section 5 is reached, such compensation shall be paid as may be determined by the court on a reference made to it by the District Magistrate.

(2) The court, in deciding the reference, shall have regard to the provisions of sub-section (1) of Section 28 of the Land Acquisition Act, 1894, in so far as the same may be applicable and also to the reasonable expenses, if any, incurred in vacating the accommodation and shall as far as possible follow the procedure applicable to suits under the Code of Civil Procedure, 1908. The decision of the court shall have the force of a decree.

7. No appeal or revision against the order of the Court.—Notwithstanding anything to the contrary contained in any enactment for the time being in force, no appeal or revision shall lie against the decision of the court under Section 6.

8. Release from requisition.—(1) Where any accommodation requisitioned under this Act is to be released from requisition the District Magistrate shall release it in favour of the person from whom

8. *Mst. Ahmedi Begum v. D. M. Agra*, 1951 A 880.

9. *Smt. Prabhbabati Devi v. D. M.*

10. *Allahabad*, 1952 A 836.
Ram Chandra v. D. M. Aligarh, 1952 A 520.

it was requisitioned. If the accommodation was subject to mortgage with possession on the date of requisition and the mortgage has since been redeemed or otherwise paid off, or if the accommodation was held by a receiver, trustee or guardian, and the receiver, trustee or guardian as the case may be, has been discharged, or the person from whom it was requisitioned is dead, the District Magistrate may, after making such enquiry, if any, as he may consider necessary, specify by order in writing the person to whom possession thereof shall be delivered.

(2) The delivery of possession of, and payment of compensation for, such accommodation to a person specified in the order, under sub-section (1) shall be full discharge of the [State] Government or the District Magistrate from all liability in respect of the accommodation, but shall not prejudice any rights in respect of the accommodation which any other person may be entitled to enforce against the person to whom possession is delivered or compensation is paid.

(3) Where the person to whom possession of accommodation is to be delivered under sub-section (1) cannot be found and has no agent or other person empowered to accept delivery of possession on his behalf, the District Magistrate may cause a notice, declaring that the accommodation is released from requisition, to be published in the Official *Gazette*.

(4) When the notice referred to in sub-section (3) has been published, the accommodation specified in the notice shall cease to be subject to requisition on and from the date of the publication of the notice in the *Gazette*, and shall be deemed to have been delivered to the person entitled to possession thereof, and the [State] Government or the District Magistrate shall not be liable for any compensation or other claim in respect of the accommodation for any period after such date.

9. Penalty.—Any person who contravenes any provision of this Act or of any order made thereunder, or who obstructs the taking of possession under this Act, shall be punished with imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both.

10. Power to order repairs.—Where the District Magistrate requisitions any accommodation under this Act, he may at any time by notice in writing order the owner to execute such repairs, and within such time, as may be specified in the notice.

11. Execution of order in case of non-compliance.—(1) If any person fails to comply with any order made under Section 3 the court shall, on the application of the District Magistrate, execute the order as if it were a decree passed by that court.

(2) If the owner fails to execute any repair in pursuance of an order made under Section 10, the District Magistrate may cause such repair to be executed, and the cost thereof may, without prejudice to any other mode of recovery, be deducted from the compensation payable to the owner.

Scope.—This section pre-supposes the existence of a valid order. If the order is invalid or without jurisdiction the court has no jurisdiction to execute it. 11

12. Power of entry and inspection.—The District Magistrate or any person authorized by him in this behalf may, after giving reasonable notice, enter any premises and inspect such premises or any property thereon for the purpose of determining whether an order under Section 3 may be made.

13. Effect of provisions inconsistent with other enactments.—The provisions of this Act shall have effect notwithstanding anything to the contrary contained in any enactment for the time being in force, or any instrument having the force of law.

14. Protection of action taken under the Act.—No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done in pursuance of any order made under this Act.

15. Cognizance of offences under the Act.—No court shall take cognizance of any offence punishable under this Act except on a report in writing of the facts constituting such offence made by the District Magistrate.

16. Orders not to be questioned in any court.—Except as provided in this Act no order made in exercise of any power conferred by or under this Act shall be called in question in any court.

Civil Courts.—Powers.—The section does not debar a court from examining the question whether the order impugned can be described as one coming within the limits of powers conferred by or under the Act. What the section lays down is that the court has no power to interfere with an order made within the ambit of the power conferred upon the authority making it. There is nothing in the section which expressly deny or limit the jurisdiction of courts to control an excess or abuse of power. It is open to courts to declare the order invalid, if it is not in accordance with the provisions of the Act or goes beyond the powers conferred on the authority. The "calling in question" used in the section cannot mean "challenging its legality".¹⁶

17. Rule-making power.—The [State] Government may, by notification in the Official Gazette, make rules to give effect to the purposes of this Act.

18. Continuance of orders.—Any order made under the [Uttar Pradeh] Accommodation Requisition Ordinance, 1947, and in force immediately before the commencement of this Act, shall continue to be in force and be deemed to be an order made under this Act.

THE UNITED PROVINCES ACQUISITION OF PROPERTY (FLOOD RELIEF) ACT, 1948

(U. P. Act No. XXXIX of 1948)

CONTENTS

- | | |
|--|---|
| 1. Short title, extent and commencement. | 9. Payment of Compensation for requisitioned land. |
| 2. Definitions. | 10. Release from requisition. |
| 3. Procedure of requisition. | 11. Review of compensation by Commissioner. |
| 4. Use of requisitioned land. | 12. Courts not to question any order passed under this Act. |
| 5. Powers of the Requisitioning Authority. | 13. Protection of persons acting under this Act. |
| 6. Payment of compensation. | 14. Repeal. |
| 7. Acquisition of Land. | 15. Rule-making powers. |
| 8. Compensation to the owner. | |

(Passed by the United Provinces Legislative Assembly on October 22, 1948 and United Provinces Legislative Council on November 5, 1948.)

[Received the assent of the Governor on December 9, 1948, under Section 75 of the Government of India Act, 1935, as adopted by the India (Provisional Constitution) Order, 1947, and was published in the United Provinces Gazette (Extraordinary), dated December 13, 1948].

AN ACT

to provide for powers to afford immediate relief to persons in the flood affected areas.

Preamble.— WHEREAS [* * * * * * *] it is necessary [to provide for powers for immediate requisition and acquisition of land for building sites and building materials for relief to the sufferers in the flood affected areas.]

IT is hereby enacted as follows :

Prefatory Note.—The following extract from the Statement of Objects and Reasons may be usefully noticed :—

"The recent floods in the [State] have caused wide-spread damage to houses and villages sites. Some 4,000 villages were affected and it is estimated that about 2,000 village *abatis* have been either partly or completely washed away. The situation created by the floods has been a great calamity, but opportunity should be utilized to construct villages on modern planned lines in areas where the old village site has either entirely or for the most part been washed away by floods and thereby to prevent the haphazard construction of houses. In order to achieve this end it is expedient that Government should have powers to acquire alternative sites and requisition building materials, immediately". Vide Notification No. 4037-I-S, dated October 16, 1948 published in U. P. Government Gazette (Extraordinary), dated October 16, 1948. For proceedings see Legislative Assembly Proceedings, dated October 27, 1948 and Legislative Council Proceedings dated November 5, 1948.

Legislative Changes :—The words 'owing to extensive damage caused by the recent floods in certain areas of the U. P.' after the word "Whereas" have been deleted and the words [to provide for.....affected areas] have been substituted for the words "immediately to requisition and acquire land for building sites and building material for relief to the sufferers, in the flood affected areas and to provide for powers thereof' by U. P. Act No. XXXVI of 1952.

1. Short title, extent and commencement.—(1) This Act may be called the [Uttar Pradesh] Acquisition of Property (Flood Relief) Act, 1948.

(2) It shall apply to Banaras, Ghazipur, Ballia, Moradabad, Bareilly, Budaun, Farrukhabad, Kanpur, Shahjahanpur, Allahabad, Mirzapur, Gorakhpur, Deoria, Basti, Sitapur, Lakhimpur-Kheri, Saharanpur, Banda, Hardoi and Unnao Districts of the United Provinces but the [State] Government may, by notification in the *Gazette*, extend it to any other area.

(3) It shall come into force at once.

Legislative changes.—In sub-section (1), the words "(Temporary Powers)" and in sub-section (3) the words after the words "at once" have been deleted by Section 3 of U.P. Act XXXVI of 1952.

It has been extended to Rampur State by Section 3 of Rampur (Application of Laws) Act (Act XII of 1950) with effect from 30-12-49 and to Banaras and Tehri-Garhwal by Section 3 of Banaras and Tehri-Garhwal (Application of Laws) Order, 1949 with effect from November 3, 1949.

2. Definitions.—In this Act, unless there is anything repugnant in the subject or context—

- (a) “Building material” includes bricks, timber, bamboo, earth, lime, cement, iron and steel, and other materials required in construction of houses ;
- (b) “Compensation Officer” and “Requisitioning Authority” mean the Collector of the district and include an Assistant Collector of the 1st class appointed by the Collector, provided that the same officer shall not be the Requisitioning Authority and Compensation Officer in respect of the same case ;
- (c) “Landholder”, “Tenant”, “Rent” and “Sayar” have the meaning respectively assigned to them in the [Uttar Pradesh] Tenancy Act, 1939 ;
- (d) “Person interested” includes all persons claiming an interest in compensation to be made on account of the requisition or acquisition of land under this Act; and a person shall be deemed to be interested in the land if he is interested in an easement affecting the land:

Provided that in the case of building materials ‘person’ shall mean the owner of such building materials ;

- (e) “[State] Government” means the Government of the [Uttar Pradesh]; and
- (f) “Public purpose” means provision of village sites or repair or construction of houses for persons affected by floods.

3. Procedure of requisition.—If in the opinion of the Requisitioning Authority it is necessary or expedient so to do for a public purpose, it may, by order, requisition any land or building material by serving on the owner and the person in possession thereof and, when the owner or person in possession thereof is not readily traceable, or the ownership or the right to possession of the land or building material is in dispute or owing to the number of persons entitled to the ownership or to the possession thereof, it is not reasonably convenient to serve everyone of them separately, by publishing, in such manner as may be specified in that behalf, a notice stating that the Requisitioning Authority has decided to requisition such land or building material in pursuance of this section, and may make such further order including orders relating to the disposal, possession and enjoyment of any trees and other crops of any person standing on such land, as appear to it to be necessary or expedient in connection with the requisitioning.

4. Use of requisitioned land.—Where any land or building material has been requisitioned under Section 3, the Requisitioning Authority may use it in such manner as may appear to it to be expedient for any public purpose.

5. Powers of the Requisitioning Authority.—(1) The Requisitioning Authority may, with a view to requisitioning any land or building material under section 3 or determining the compensation thereof, by order—

- (a) require any person to furnish to such authority as may be specified in the order such information in his possession relating to the property as may be specified, and

(b) direct that the owner or person in possession of the land or building material shall not, without the permission of the authority making the order, dispose of it till the expiry of such period as may be specified in the order.

(2) Without prejudice to the powers conferred by sub-section (1), any person or authority appointed in this behalf by the Requisitioning Authority may enter any land and inspect it for the purpose of determining whether, and if so in what manner, an order under Section 3 should be made in relation to such land or building material or with a view to securing compliance with any order made under Section 3.

6. Payment of compensation.—(1) Where any land is requisitioned under Section 3, there shall be paid to every person interested such compensation as may be agreed upon in writing between such person and the Requisitioning Authority in respect of—

(a) the requisitioning of such land, and

(b) any damage done during the period of requisitioning such land, other than that which may have been sustained by natural causes.

(2) Where no such agreement can be reached, the Requisitioning Authority shall refer the matter with his recommendations as to the amount of compensation therefor to the Compensation Officer and shall direct the person claiming compensation to appear before such officer on such date as may be specified and the Compensation Officer shall, on the date fixed in that behalf or on any other date to which the hearing may be postponed, hear such person, and, after such further inquiry as he may deem fit, determine the amount of compensation which shall, except as provided in Section 11, be final and conclusive.

(3) The Compensation Officer shall in fixing the amount of compensation have regard to—

(a) the rent, if any, assessed on the land which has been requisitioned ;

(b) the *sayar* income, if any, derived from the land ;

(c) the value of any trees which as a result of the requisition have to be removed from the land ;

(d) the damage sustained by the person interested by reason of the taking of any standing crops or trees which may be on the land at the time of taking possession thereof.

But he shall not take into consideration the value of trees, which may continue to be possessed and enjoyed by the person entitled thereto.

(4) The compensation fixed under sub-section (1) or determined under sub-section (2) shall be paid in such manner as the parties may agree or as the case may be, the Compensation Officer may direct.

7. Acquisition of land.—(1) Where any land or building material has been requisitioned under Section 3, the Requisitioning Authority may, at any time, acquire it by publishing in such manner as the said Authority may specify, a notice to the effect that it has decided to acquire it in pursuance of this section.

(2) Where a notice as aforesaid is duly published, the requisitioned land or building material shall, from the beginning of the day on

which the notice is so published, vest absolutely in the [State] Government free from all encumbrances and the period of requisitioning of such land or building material shall end forthwith.

(3) The Requisitioning Authority may, subject to the general control of the [State] Government, retain or utilize, or let on hire, lease, sell, exchange or otherwise dispose of, any land acquired in pursuance of this section to any person affected by floods and in such manner as it may deem proper.

8. Compensation to the owner.—(1) Whenever in pursuance of Section 3 or Section 7 a Requisitioning Authority requisitions or acquires, as the case may be, any building material the owner thereof shall be paid such compensation as the said Authority may determine.

(2) In determining the amount of compensation under sub-section (1), the Requisitioning Authority shall have regard to the control price, or if there is no control price, to the market value thereof and to cost of transport and storage actually incurred by the person interested.

9. Payment of compensation for acquisitioned land.—(1) Where any land is acquired under Section 7 there shall be paid to the person interested compensation, the amount of which shall be determined by the Compensation Officer in accordance with the principles set out in clauses first to fourth of sub-section (1) of Section 23 of the Land Acquisition Act, 1894 :

Provided that the market value referred to in clause first of sub-section (1) of Section 23 of the Land Acquisition Act, 1894, shall be deemed to be the market value of such land on the date of publication of the notice under Section 7 or on the first day of September, 1939, whichever is less:

Provided further that, where such land has been held by the owner thereof under a purchase made before the first day of October, 1948, but after the first day of September, 1939, by a registered document or a decree for a pre-emption between the aforesaid dates, the compensation shall be the price actually paid by the purchaser or the amount of payment on which he may have acquired the land in the decree for pre-emption as the case may be:

Provided further that, in determining the amount of compensation, the Compensation Officer shall also take into consideration any benefit which may accrue or have accrued to the person interested in or over any other land belonging to such person on account of the abandonment of such other land by any person in occupation thereof.

(2) When the compensation has been determined under sub-section (1), the Compensation Officer shall make an award in accordance with the principles, in so far as they are not inconsistent with this Act or any rule made thereunder, set out in Section 11 of the Land Acquisition Act, 1894.

(3) When any person aggrieved by an award made under sub-section (2) makes an application within the period prescribed requiring the matter to be referred to the District Judge, the Compensation Officer shall refer it to the decision of the District Judge having jurisdiction.

(4) The provisions of the Land Acquisition Act, 1894, shall, in so far as they are not inconsistent with the provisions of this Act, apply in respect of any reference made to the District Judge under sub-section (3), except that no appeal shall lie from any order passed by such District Judge.

10. Release from requisition.—(1) Where any land or building material requisitioned under Section 3 is to be released from requisition, the Requisitioning Authority may, after making such inquiry, if any, as it considers necessary, specify by order in writing the person who appears to it to be entitled to the possession of such land or building material.

(2) The delivery of possession of such land or building material to the person named in the order made under sub-section (1) shall be full discharge of any liability of the [State] Government to deliver possession to such person as may have rightful claim to possession thereof but shall not prejudice any right in respect of such land or building material which any other person may, by due process of law, be entitled to enforce against the person to whom possession is so delivered.

(3) Where the person to whom possession of any land, or building material requisitioned under Section 3 is to be delivered cannot be found or is not readily traceable or has no agent or other person empowered to accept delivery on his behalf, the Requisitioning Authority (a) if the property to be delivered is land, shall publish in the Official *Gazette* a notice declaring that such land is released from requisitioning and the fact will be notified by beat of drums in the locality; and (b) if it is building material, may sell the same in such manner as may be prescribed and deposit the proceeds in the treasury, which shall then be payable to the person entitled thereto.

(4) When a notice referred to in clause (a) of sub-section (3) is published in the Official *Gazette*, the land specified in such notice shall cease to be subject to requisitioning onward from the date of such publication and shall be deemed to have been delivered to the person entitled to possession thereof.

(5) Upon delivery of possession or sale made under sub-sections (2) to (4), the [State] Government shall save as provided in clause (b) of sub-section (3) or as may be directed by any order made under Section 6, not be liable for any compensation or other claims in respect of such land or building material.

11. The Commissioner may review any order passed by the Requisitioning Authority under Section 3 or by the Compensation Officer under sub-section (2) of Section 6, if he is satisfied that grave injustice has been done to the person interested.

12. Court not to question any orders passed under this Act —
(1) No order made in exercise of any power conferred by or under this Act shall be called in question in any court except as provided in this Act.

(2) Where an order purports to have been made and signed by any authority in exercise of any powers conferred under this Act, a court shall within the meaning of Indian Evidence Act, 1872, presume that such order was so made by that Authority.

13. Protection of persons acting under this Act.—(1) No suit, prosecution or other legal proceeding shall lie against the Compensation Officer or the Requisitioning Authority or any person for anything which is in good faith done or intended to do done in pursuance of this Act or any rule made or order issued thereunder.

(2) No suit or other legal proceeding shall lie against the [State] Government for any damage caused or likely to be caused by anything in good faith done or intended to be done in pursuance of this Act or any rule or order made thereunder.

14. Repeal.—(1) The [Uttar Pradesh] Acquisition of Property (Flood Relief) Ordinance, 1948, is hereby repealed and the provisions of Section 6 and 24 of the [Uttar Pradesh] General Clauses Act, 1904, shall apply to it as if it has been an Act repealed by an [Uttar Pradesh] Act.

(2) Any appointment or order made or direction issued under the said Ordinance and in force immediately before the commencement of this Act shall continue in force and be deemed to be an appointment, order or direction made or issued, as the case may be, under this Act.

15. Rule-making power.—(1) The [State] Government may make rules for the purposes of carrying into effect the provisions of this Act.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for—

- (a) the appointment, functions and jurisdiction of Compensation Officer and Requisitioning Authorities;
- (b) the conduct and hearing of references that may be made to Compensation Officer and the procedure to be followed by such officer;
- (c) the form of notices to be given and the mode of their service.

Note:—For rules made under this section see Notification No. 2244/I-S, dated May 18, 1949, published in U. P. Government Gazette, dated May 21, 1949, Pt. I A., pp. 272-275.

THE AGRA UNIVERSITY ACT, 1926

UTTAR PRADESH ACT NO VIII OF 1926

CONTENTS

Sections.

1. Short title and commencement.
2. Definitions
 - The University.**
 - 3. The University.
 - 4. Powers of the University.
 - 5. University open to all classes, castes and creeds.
6. Visitation.
 - Officers of the University.**
 - 7. Officers of the University.
 - 8. The Chancellor.
 - 9. The Vice-Chancellor.
 - 10. Powers and duties of the Vice-Chancellor.
 - 11. The Registrar.
 - 12. Other officers.

Sections.

- | | |
|--|--|
| Authorities of the University. | 13. Authorities of the University. |
| 14. The Senate. | 14. The Senate. |
| 15. Meetings of the Senate. | 15. Meetings of the Senate. |
| 16. Powers and duties of the Senate. | 16. Powers and duties of the Senate. |
| 17. The Executive Council. | 17. The Executive Council. |
| 18. Powers and duties of the Executive Council. | 18. Powers and duties of the Executive Council. |
| 19. The Academic Council. | 19. The Academic Council. |
| 20. Finance Committee. | 20. Finance Committee. |
| 20.A. | 20.A. |
| 21. The Faculties. | 21. The Faculties. |
| 22. Deleted. | 22. Deleted. |
| | University Boards. |
| | 23. University Boards. |
| | Affiliated Colleges. |
| | 24. Affiliated Colleges. |
| | 24A. |

Teachers.

25. Appointment of Teachers of the University and Affiliated Colleges.

25A.

25B. Conditions of Service of officers and teachers.

25C.

Statutes and Regulations.

26. Statutes.

27. Statutes how made.

27A. Ordinances.

27B.

28. Regulations.

29. Regulations how made.

Admission and Examinations.

30. Admission to University courses.

31. Conduct of examinations.

Annual Report and Accounts.

32. Annual Report.

33. Budget and Annual Accounts.

Supplementary Provisions.

34. Removal from membership of the University.

35. Disputes as to constitution of University authorities or bodies.

36. Filling of causal vacancies.

37. Proceedings of University authorities and bodies not invalidated

by vacancies.

38. Pension or Provident Fund
Deleted.

Transitory Provisions.

39. Completion of courses and examinations for students in colleges associated with the Allahabad University.

40. Appointment of a special officer by the [State] Government.

41. Repeal of certain enactments

STATUTES*Chapters*

1. General.

2. The Senate.

3. The Executive Council.

4. Academic Council.

5. The Faculties.

6. Boards of Studies.

7. Appointment of Examiners.

8. Admission of Candidates to External Degrees.

9. Admission of Librarians to Examinations and External Degrees.

10. Administrations.

11. Elections general and by Relation ,

12. Election by the Singh Translable Voto.

Notifications

[As modified up to U. P. Act XVII of 1954].

(Received the assent of the Governor on September 11, 1926, and of the Governor-General on October 20 1926, and was published under Section 81 of the Government of India Act on October 30, 1926, part VII, pp. 65 -75).

An Act to establish and incorporate a University at Agra.

Whereas it is expedient to establish and incorporate a University at Agra for the purpose of affiliating the colleges associated with the University of Allahabad as reorganized by the Allahabad University Act, 1921, so as to set the University of Allahabad free to function as a unitary, teaching and residential University by relieving it of the responsibility of controlling the quality and character of the teaching given in its name by the associated colleges and placing such responsibility upon an affiliating University at Agra ;

And whereas the previous sanction of the Governor-General has been obtained under Section 81-A (3) of the Government of India Act, to the passing of this Act ; it is hereby enacted as follows :—

Notes.—For S. O. R. see Gazette 1926, Pt. VIII, page 227 ; for R. S. C. see ibid, 1926, Pt. VIII, pp. 446-448 ; for discussion, see Legislative Council Proceedings, dated June 25, 1926, August 5, and 6, 1926, in Vol. XXX, pages 21-64, Vol. XXXI, pages 172-202 and Vol. XXXI, pp. 204-261 respectively.

The S. O. R. of the Amending Act No. XXXI of 1953 runs as below :—

"The Agra University Act was passed 27 years ago. Certain provisions including those relating to the representation of Colleges in Rajasthan on the University Senate and Executive Council have become anomalous on the establishment of the University at Jaipur. The working of the Act during this period has also shown that it is deficient in certain respects. Besides, the standard of higher education, which is of paramount importance needs to be ensured at a proper level. This problem has been considered recently by the representatives of the Universities of Uttar Pradesh and the Radhakrishnan Commission and other bodies have also given thought to this question. It is hoped to create conditions to impose the Standards of education the on lines discussed at these conferences by the elimination of evils which have come to the forefront in the field of University administration

The Bill is accordingly introduced for the consideration of the House". *vide* Statement of Objects and Reasons published in U. P. Gazette Extra., dated August 6, 1953.

1. Short title and commencement.—(i) This Act may be called the Agra University Act, 1926.

(2) It shall come into force on such date as the [State]¹ Government may, by notification in the [Official Gazette],¹ appoint in this behalf:

Provided that save as otherwise expressly provided herein, different provisions of this Act may come into force on such date or dates as the [State]¹ Government may, by Notification in the [Official Gazette],¹ appoint.

Notes 1.—The original Act came into force on July 1, 1927 *vide* Notification No. I. G/XV-254, dated January 5, 1927, published in Gazette of India Part I, p. 21. The Sections, 1, 35 and 36 of the amending Act XXXI of 1953 came into force on December 30, 1953 *vide* U. P. Gazette Extraordinary of the same date and the remaining Sections, viz. 2 to 34 came into force on February 25, 1954 *vide* Notification No. A(2)-1375/XV-67-1954, dated February 25, 1954, published in U. P. Gazette Extraordinary of the same date. The amendments effected by the amending Act XXVII of 1954 came into force on 29th December, 1954 *vide* U. P. Gazette Extraordinary of the same date.

Notes 2.—It was also extended to Rampur State with effect from 30th December, 1949 by Section 3 of U. P. Act XII of 1950 and to Banaras and Tehri-Garhwal with effect from 30-11-49 by Section 3 of Banaras and Tehri-Garhwal (Application of Laws) Order, 1949 *vide* notification No. 3262 (1) & (2)/XVII. Merg. dated 30-11-49.

2. Definitions.—In this Act and in all Statutes made hereunder, unless there is anything repugnant in the subject or context,—

(a) 'Affiliated College' means an institution affiliated to the University in accordance with the provisions of this Act and Statutes;

[(aa) 'Autonomous College' means an affiliated college declared as such by the University in accordance with the provisions of sub-section (1) of Section 24-A ;]²

(b) 'Hostel' means a duly recognized place of residence for students of affiliated colleges;

[(bb) 'Ordinances' means Ordinances of the University made under this Act and for the time being in force ;]³

(c) 'Principal' means the head of an affiliated college;

(d) 'Registered Graduates' means graduates registered under the provisions of this Act and Statutes;

[(dd) 'State Government' means the Government of Uttar Pradesh ;]⁴

(e) 'Statutes' and 'Regulations' means, respectively the Statutes and Regulations of the University for the time being in force ;

[(f) 'teacher' means a teacher of the University or a teacher of an affiliated college, and includes a principal ;]⁵

1. The words (Uttar Pradesh), (State) and (Official Gazette) were substituted for the words 'United Provinces', 'Provincial' or 'Province' and 'Gazette' by A. O. 1950 and A. O. 1957 respectively throughout

the Act.

2. Added by U. P. Act XXXI of 1953, Section 2.

3. Substituted for the old clause (f) by *ibid.*

[(f) 'teachers of affiliated colleges' means persons employed in affiliated colleges for giving instructions for University degrees ;]³

[(ff) 'teachers of the University' means persons employed by the University for giving instruction or conducting research ;]³

[(g) 'Inspecting Officers in the Department of Education' means persons engaged permanently as inspecting officers by (a) the Department of Public Instruction, [Uttar Pradesh] or (b) the Education Department of Madhya Pradesh [****]⁴ or Vindhya Pradesh or Bhopal.]⁴

(h) 'University' means the Agra University.

[(i) 'Working Men's College' means an affiliated college recognized by the University in accordance with sub-section (2) of Section 24-A.]³

THE UNIVERSITY

3. The University—(1) The first Chancellor and Vice-Chancellor of the University, and the first members of the Senate, of the Executive Council and of the [Academic Council]^{5a} of the University, and all persons who may hereafter become such officers or members, so long as they continue to hold such office or membership, are hereby constituted a body corporate by the name of the Agra University.

(2) The University shall have perpetual succession and a Common Seal and shall sue and be sued by the said name.

4. Powers of the University.—Subject to such conditions as may be prescribed by or under the provisions of this Act, the University shall have the following powers, namely,—

(1) to provide for instruction in such branches of learning as the University may think fit, and to make provision for research and for the advancement and dissemination of knowledge;

[(2) to confer degrees and other academic distinctions on persons who—

(a) have pursued an approved course of study in an affiliated college, or in more than one affiliated colleges situate in the same town, in accordance with an arrangement arrived at among them and sanctioned by the Vice-Chancellor, or

(b) are teachers in educational institutions under conditions laid down in the Statutes and Ordinances, or

(c) are inspecting officers in the Department of Education of the Government of any part "A", "B" or "C" State, and fulfil the conditions laid down in the Statutes and Ordinances, or

(d) being graduates, have served as whole-time librarians for a period of not less than three years in the University or an affiliated college and fulfil such other conditions as may be laid down in the Statutes, or

4. The old clause (g) renumbered as clause (h) and a new clause (g) inserted by U. P. Act IV of 1933. Section 2.

5. The words "or Rajasthan" deleted

by U. P. Act XXXI of 1958.

5a. The words 'Academic Council' were substituted for the words "Academic Board" throughout the Principal Act by *ibid.* Section 34.

(e) have carried on research under conditions laid down in the Statutes and Ordinances, or
 (f) are women who have carried on study privately under conditions laid down in the Statutes,
 and have passed the examination of the University under conditions laid down in the Statutes, Ordinances and Regulations.

Explanation—The degrees conferred under clauses (a) and (e) and those conferred under the remaining clauses shall respectively be termed and be also stated in the relative diplomas as ‘internal’ and ‘external’ ;] ⁶

(3) to confer honorary degrees or other distinctions on approved persons in the manner laid down in the Statutes;

[(4) to institute certificates of proficiency, to make provision for instruction for and to grant such certificates, under conditions laid down in the Ordinances ;] ⁶

(5) to admit to the privileges of affiliation, under conditions prescribed in the Statutes [* * * *] ⁷ colleges in the [Uttar Pradesh, Madhya Pradesh, Vindhya Pradesh and Bhopal :]

Provided that it shall not be lawful for the University to affiliate any college situated within the limits of the Universities of Allahabad or Lucknow [or in the area that may after the coming into force of the Agra University (Amendment) Act, 1953, be included within the limits of a University established by law, except with the consent of the University concerned ;] ⁸

(6) to inspect affiliated colleges and places approved by the University for the residence of students;

(7) to co-operate with other Universities and authorities in such manner and for such purposes as the University may determine;

(8) to supplement the work of teaching and research in affiliated colleges by instituting teaching posts at such centres as the University may determine, and to appoint persons to such posts;

(9) to institute and award Fellowships, Scholarships, Exhibitions, Prizes and medals in accordance with the Statutes and Regulations;

(10) to demand and receive such fees as may be prescribed in the Statutes :

(11) to do all such other acts and things, whether incidental to the powers aforesaid or not, as may be requisite to further the objects of the University, and to cultivate and promote arts, science, and learning.

5. University open to all classes, castes and creeds.—The University shall be open to all persons of either sex of whatever race, creed or class, and it shall not be lawful for the University to adopt or impose on any person any test whatsoever of religious belief or profession in order to entitle him to a certificate, diploma or degree of the University, or to serve as a teacher or to hold any office in the University or to enjoy or exercise any privileges thereof, except where such test is imposed in any testamentary or other instrument creating a benefaction which has been accepted by the University :

6. Substituted by U. P. Act XXXI of 1953, Section 3.

deleted by *ibid.*

7. The words “and Regulations”

8. Inserted by *ibid.*

Provided that nothing in this section shall be deemed to prevent persons (whether teachers or not) from giving religious instruction in affiliated colleges or hostels to those who are not unwilling to receive it.

VISITATION

⁹ [6. **Visitation.**--(1) The State Government shall have the right to cause an inspection to be made by such person or persons as it may direct, of the University and its buildings, and of any affiliated college or hostel, and also of the examinations, teaching and other work conducted or done by the University. The State Government shall also have the right to cause an inquiry to be made in like manner in respect of any matter connected with the University or an affiliated college. The State Government shall, in every case of inspection or inquiry, give notice to the University or the affiliated college (as the case may be) of its intention to cause an inspection or inquiry to be made, and the University or the college concerned shall be entitled to appoint a representative who shall have the right to be present and be heard at such inspection or inquiry.

(2) The State Government shall communicate to the Executive Council or the Management of the affiliated college (as the case may be) its views with reference to the results of such inspection or inquiry and shall, after ascertaining the opinion of the Executive Council or the Management of the college thereon require the University, or the college to take such action as it may direct.

(3) The Executive Council of the management of the college shall then, within such time as the State Government may appoint, comply with the directions given and report to the State Government.]

OFFICERS OF THE UNIVERSITY

7. **Officers of the University**—The following shall be the officers of the University :

- (i) The Chancellor.
- (ii) The Vice-Chancellor.
- (iii) The Registrar.
- (iv) The Deans of the Faculties.
- (v) Such other officers as may be declared by the Statutes to be officers of the University.

8. **The Chancellor.**--(1) The Governor of the [Uttar Pradesh] shall be the Chancellor of the University and the President of the Senate, and shall, when present preside at meetings of the Senate and at any Convocation of the University.

(2) [Deleted]¹⁰

(3) The Chancellor shall have such other powers as may be conferred on him by this Act or the Statutes.

9. **The Vice-Chancellor.**--¹¹(1) The Vice-Chancellor shall be a whole-time salaried officer of the University and shall be appointed by the Chancellor from amongst persons whose names are submitted by the Executive Council in accordance with sub-sections (2) and (3).

(2) The Executive Council shall, as far as may be, at least thirty

9. Substituted by U. P. Act XXXI of 1953, Section 4 which was first substituted by A. O. of 1957.
10. Sub-Section (2) deleted by

U. P. Act XXXI of 1953, Section 5.

11. Substituted by U. P. Act XXXI of 1953, Section 6.

days before the date on which a vacancy is due to occur in the office of the Vice-Chancellor and also whenever so required by the Chancellor, submit to the Chancellor the names not exceeding three in number of persons suitable to hold the office of Vice-Chancellor:

Provided that the Chancellor may before making the appointment return the names submitted by the Executive Council to it for reconsideration and the Council may then either submit the same names or make any additions or alterations in them so, however, that the names so submitted do not exceed three in number.

(3) Where the name or names proposed in the Executive Council for being submitted to the Chancellor under sub-section (2) do not exceed three, the Council shall submit at such names, but if the number exceeds three the Council shall out of the names so proposed elect three names according to the system of proportional representation by means of the single transferable vote.

(4) The Vice-Chancellor shall be paid a salary of Rs. 2,000 per month and be provided a furnished residence at Agra rent-free or in lieu thereof be paid an allowance of Rs. 200 per month.

(5) The Vice-Chancellor shall hold office for a period of five years, but may at any time relinquish office by submitting his resignation to the Chancellor not less than sixty days in advance of the date on which he wishes to be relieved.

(6) No person, who has at any time previously held in a substantive capacity the office of Vice-Chancellor in the University, shall be eligible for re-appointment.

(7) Subject as aforesaid, other conditions of service of the Vice-Chancellor may be prescribed by the Statutes.

(8) Where a vacancy occurs or is likely to occur in the office of Vice-Chancellor by reason of leave, illness or any cause other than resignation in accordance with sub-section (5) or the expiry of the term, the Registrar shall report the fact forthwith to the Chancellor who shall make such arrangement as he deems fit for carrying on the duties of the Vice-Chancellor and shall at the same time call upon the Executive Council to forward its recommendations in accordance with sub-sections (2) and (3).

(9) Until the Chancellor has made arrangements under sub-section (8) the Registrar shall carry on the current duties of the office of Vice-Chancellor, but he shall not preside at meetings of the University Authorities].

Note.--The Transitory Provisions were provided by U. P. Act XXXI of 1953, Section 35 which runs as below:—

"35. Notwithstanding anything in the Principal Act, the Agra University (Supplementary) Act, 1922, or this Act, the Chancellor may at any time after this Act has been first published in the Official Gazette appoint a person to be Vice-Chancellor and it shall not be necessary for making the appointment to follow the procedure laid down in Section 9. The Vice-Chancellor so appointed shall exercise all the powers and perform all the duties and functions of the Vice-Chancellor under the Principal Act as amended by this Act and shall hold office for a period of one year, but the Chancellor may, if it becomes necessary, extend the period by one year."

10. Powers and duties of the Vice-Chancellor.—(1) The Vice-Chancellor shall be the principal executive and academic officer of the University, and shall, in the absence of the Chancellor, preside at meetings of the Senate and at any Convocation of the University. He shall

be an *ex-officio* member and Chairman of the Executive Council and of the Academic Council, and shall be entitled to be present and to speak at any meeting of any authority or body of the University, but shall not be entitled to vote thereat unless he is a member of the authority or body concerned.

(2) It shall be the duty of the Vice-Chancellor to see that this Act, the Statutes, [the Ordinances]¹² and the Regulations are faithfully observed, and he shall have all powers necessary for this purpose.

(3) The Vice-Chancellor shall have power to convene meetings of the Senate, the Executive Council, and the Academic Council provided that he may delegate this power to any other officer of the University.

(4) (a) In any emergency which, in the opinion of the Vice-Chancellor, requires that immediate action should be taken, he shall take such action as he deems necessary, and shall at the earliest opportunity thereafter report his action to the officer, authority or other body who or which in the ordinary course would have dealt with the matter

(b) When action taken by the Vice-Chancellor under this subsection affects any person in the service of the University, such person shall be entitled to prefer an appeal to the Executive Council within fifteen days from the date on which such action is communicated to him.

(5) The Vice-Chancellor shall give effect to the orders of the Executive Council regarding the appointment, dismissal, and suspension of persons in the employment of the University, and shall exercise general control over the affairs of the University. He shall be responsible for the discipline of the University in accordance with this Act, the Statutes, [the Ordinances]¹³ and the Regulations.

(6) The Vice-Chancellor shall exercise such other powers as may be prescribed by the Statutes, [the Ordinances]¹² and the Regulations.

11. The Registrar.—(1) The Registrar shall act as the Secretary of the Senate, of the Executive, Council, and of the Academic Council.

(2) He shall be a whole-time officer. His emoluments and the conditions of his appointment shall be [prescribed by the Ordinances]¹⁴.

(3) He shall, subject to the sanction of the Vice-Chancellor and subject to [the Ordinances]¹² Regulations that may be framed in this behalf, control the clerical and [inferior]¹⁴ staff of the University.

(4) The Registrar shall exercise such other powers and perform such other duties as may be prescribed by the Statutes, [the Ordinances]¹² and the Regulations, or as may be imposed upon him by any authority of the University.

12. Other officers.—The powers of officers of the University other than the Chancellor, the Vice-Chancellor, and the Registrar shall be prescribed by the Statutes, [the Ordinances]¹² and the Regulations.

AUTHORITIES OF THE UNIVERSITY

13. Authorities of the University.—The following shall be the authorities of the University :—

12. Inserted by U. P. Act XXXI of 1953, Section 7.
13. Inserted by U. P. Act XXXI of 1953, Section 8.

11. Substituted for the word "menial" by U. P. Act XXXI of 1953, Section 8.
15. Inserted by *ibid.* Section 9.

- (i) The Senate,
- (ii) The Executive Council,
- (iii) The Academic Council,
- (iv) [The Finance Committee]¹⁶,
- (v) The Faculties,
- (vi) Such other authorities as may be declared by the Statutes to be authorities of the University.

¹⁷[**14. The Senate.**—(1) Subject to the provisions of the Statutes, the Senate shall consist of the following members so, however, that—

- (a) the total number of members excluding the ex-officio and life members shall not exceed 125 ; and
- (b) the number of members who may be in the service of the University or an affiliated college shall at no time exceed the number of the other members ;

Class I. Life Members—

- (i) Such persons as may be appointed by the Chancellor to be life members on the ground that they have rendered eminent service to the University or to the cause of learning :

Provided that their number in the Senate shall not at any time be more than four.

- (ii) Persons who have made donation of Rs. 20,000 or more to and for the purposes of the University.
- (iii) All persons who have held the office of Vice-Chancellor in the University for one complete term.

Class II. Ex-Officio Members—

- (i) the Chancellor ;
- (ii) the Minister for Education in the Government of Uttar Pradesh ;
- (iii) the Vice-Chancellor ;
- (iv) the Director of Education, the Director of Industries, the Director of Agriculture, and the Director of Medical and Health Services, Uttar Pradesh ;
- (v) the Vice-Chancellors of all the other Universities established by law within the territory of Uttar Pradesh ;
- (vi) the members of the Executive Council of the University.

Class III.

Representatives, not exceeding ten, as may be determined in accordance with the Statutes, of persons who have made donation of sums of Rs. 2,500 or more but less than Rs. 20,000.

Class IV.

Representatives, not exceeding five, of industries, commerce, agriculture, learned bodies and the professions.

16. Substituted for the word "The Board of Inspection" by U. P. Act XXXI of 1953, Section 10.

17. Substituted for the old Section 14 by U. P. Act XXXI of 1953, Section 11.

Class V.

Seven persons who are members of the Uttar Pradesh Legislature, out of whom five shall be members of the Legislative Assembly and two shall be members of the Legislative Council.

Class VI.

Twenty representatives of the Registered Graduates to be elected according to the system of proportional representation by means of the single transferable vote, by the registered graduates from among such registered graduates as are not in the service of the University or an affiliated college and whose names have been on the register of graduates for at least three years :

Provided that no Registered Graduate shall be entitled to vote at an election unless his name has been on the register for at least one year prior to the date appointed for the return of voting papers.

Class VII.

Such member, as may be prescribed by the Statutes of representatives of the Academic Staff and of the Managements of the affiliated colleges consisting of the following categories

- (i) Teachers of the University ;
- (ii) Principals of affiliated colleges of class A ;
- (iii) Principals of affiliated colleges of class B ;
- (iv) Teachers of affiliated colleges of class A ;
- (v) Teachers of affiliated colleges of class B ;
- (vi) Representatives, not exceeding ten, of the Managements of affiliated colleges, other than those maintained exclusively by Government, of whom not less than one-half shall be representatives of colleges of class A.

For the purpose of this clause affiliated colleges shall be classified by the Statutes as colleges of class A or class B according to the amount of advanced instruction imparted in them.

Class VIII

Nominees of the Chancellor not exceeding ten.

(2) Subject to the provisions of Section 36 the term of members other than members belonging to classes I and II shall be five years.

(3) The manner of selection of members of classes III, IV, VI, and VII shall be determined by the Statutes.

(4) The Chancellor may declare vacant the seat of a member, other than an *ex-officio* or life member, who has absented himself from three consecutive annual meetings of the Senate without sufficient cause]

15. Meetings of the Senate.—(1) The Senate shall, on a date to be fixed by the Vice-Chancellor, meet once a year at a meeting to be called the annual meeting of the Senate.

(2) The Vice-Chancellor may, whenever he thinks fit, and shall, upon a requisition in writing signed by not less than twenty members of the Senate, convene a special meeting of the Senate,

[16. Powers and duties of the Senate.]—(1) The Senate shall be the supreme Governing Body of the University and shall have power to review the acts of the Executive Council (save when the Council has acted in accordance with the powers conferred on it under this Act, the Statutes, the Ordinances or the Regulations), and shall exercise all the powers of the University not provided for by this Act, the Statutes, the Ordinances and the Regulations.

(2) In particular and without prejudice to the foregoing provision the Senate may—

- (a) make Statutes and amend, and repeal them;
- (b) consider and cancel Ordinances;
- (c) consider and pass resolutions on the annual report, the annual accounts and the financial estimates;
- (d) consider and pass resolutions on any matter of general policy connected with the University; and
- (e) make Regulations.]

[17. The Executive Council.]—(1) The Executive Council shall be the chief executive body of the University. The constitution of the Executive Council shall be as follows:—

- (i) The Vice-Chancellor;
- (ii) The Director of Education, Uttar Pradesh;
- (iii) The Deans of the Faculties of Arts, Science, Medicine and Agriculture and two other Deans;
- (iv) Three Principals of affiliated colleges to be selected in the manner prescribed by the Statutes;
- (v) Four persons nominated by the Chancellor of whom one shall be an expert in Engineering;
- (vi) Five members of the Senate not being members mentioned in clauses (i) to (v) above who are not engaged in teaching in the University or an affiliated college elected by the Senate according to the system of proportional representation by means of single transferable vote;
- (vii) One person not belonging to any of the above categories, to be elected by the Academic Council.

(2) The Statutes shall prescribe the manner of selection and appointment and the qualification of the members belonging to clauses (iii), (iv) and (vii) of the sub-section (1).

(3) The Statutes relating to the nomination, election and appointment of members of the Executive Council shall contain suitable provisions so as to secure that not more than one person connected with any one affiliated college as Principal or member of the Managing Body or in any other capacity shall be member of the Executive Council.

(4) Subject to the provisions of Section 36 the term of office of members other than *ex-officio* members shall be five years.]

18. Substituted for the old Section 16 by U. P. Act XXXI of 1953, Section 12.

19. Substituted for the old Section 17 by *ibid.* Section 13.

²⁰[18. Powers and duties of the Executive Council.—(1) Subject to the provisions of this Act and the Statutes, the Executive Council shall have the following powers and duties, namely—

- (a) to hold, control and administer the property and funds of the University;
- (b) to accept the transfer of any movable or immovable property on behalf of the University;
- (c) to administer any funds placed at the disposal of the University of specific purposes;
- (d) to frame the Budget of the University;
- (e) to award fellowships, scholarships, bursaries, medals and other rewards in accordance with the Statutes and Ordinance relating thereto;
- (f) save as otherwise provided for by this Act and the Statutes, to appoint the officers, teachers of the University and other servants of the University, to define their duties and the conditions of their service and to provide for the filling of temporary vacancies in their posts;
- (g) to prescribe the courses of study for the examinations, certificates and degrees of the University;
- (h) to arrange for the holding of examinations and publication of the results;
- (i) subject to the previous sanction of the Chancellor, to grant affiliation to a college for teaching for specified degrees and to withdraw such affiliation;
- (j) to arrange for and direct the inspection of all affiliated colleges and hostels;
- (k) to control and manage and to frame rules for the University Library or Libraries and to appoint a Library Committee;
- (l) to direct the form, custody and use of the common seal of the University;
- (m) to regulate and determine all matters concerning the University in accordance with this Act, the Statutes and the Ordinances and to exercise such other powers as may be conferred or imposed on it by this Act and the Statutes.

(2) The Executive Council shall not exceed the limits of recurring and non-recurring expenditure to be incurred in each financial year as determined by the Finance Committee.

(3) The Executive Council shall take no action in regard to the courses of study except after considering the advice of the Academic Council.

(4) No teacher shall be employed by the University until provision has been made for his salary in the Budget of the University.

(5) It shall be the duty of the Executive Council to carry out the resolutions passed by the Senate, but where in any case it is not able

20. Substituted for the old Section 18 by U. P. Act XXXI of 1953, Section 14.

to do so, it shall inform the Senate of its inability with the reasons therefor.]

²¹[19. Academic Council.—(1) The Academic Council shall be the academic body of the University and shall, subject to the provisions of this Act, the Statutes and the Ordinances, have the control and general regulation, and be responsible for the maintenance of standards of instruction and examination and for research in the University, and shall exercise such other powers and perform such other duties as may be conferred or imposed upon it by the Statutes. It shall further have the right to advise the Executive Council on all academic matters.

(2) The constitution of the Academic Council and the term of office of its members shall be prescribed by the Statutes.]

²²[20. Finance Committee.—(1) The Finance Committee shall consist of—

- (i) The Vice-Chancellor, who shall be the Chairman;
- (ii) Two persons nominated by the State Government;
- (iii) Two persons who are not in the service of the University or of any affiliated college, elected by the Senate so, however, that not more than one is a member of the Executive Council.

(2) The Registrar shall be the Secretary of the Committee.

(3) Three members shall form a quorum.

(4) Members of the Finance Committee other than *ex-officio* members shall hold for five years.]

²³[20-A. (1) The Finance Committee shall have the following duties, namely—

- (a) it shall examine the accounts and the Audit Report and make recommendations to the Executive Council in regard to them;
- (b) it shall fix limits for the total recurring and the total non-recurring expenditure for the ensuing year based on the income and resources of the University;
- (c) it shall scrutinize the financial estimates of the University for the ensuing year and make its comments on them, which shall be considered by the Executive Council;
- (d) it shall perform such other functions as may be assigned to it by the Statutes.

(2) The Finance Committee shall take into consideration the views of the Executive Council in performing its duties referred to in clauses (b) and (c) of sub-section (1).]

²⁴[21. The Faculties.—(1) The University shall include such Faculties as may be prescribed by the Statutes. Each Faculty shall,

21. Substituted for the old Section 19 by U. P. Act XXXI of 1953, Section 15.
 22. Substituted for the old Section 20 by *ibid.* Section 16.

23. Added by U. P. Act XXXI of 1953, Section 16.
 24. Substituted for the old Section 21 by *ibid.* Section 17.

subject to the control of the Academic Council, have charge of the courses of study and direction of research work in the subjects assigned to it by the Ordinances.

(2) The constitution and powers of the Faculties shall be prescribed by the Statutes.

(3) There shall be a Dean of each Faculty who shall be responsible for the due observance of the Statutes, Ordinances and Regulations relating to the Faculty.

(4) The manner of appointment and the term of office of the Dean shall be prescribed by the Statutes.]

22. [Deleted by Section 18 of U. P. Act XXXI of 1953]

UNIVERSITY BOARDS

23. University Boards.—(1) The University shall establish Boards of Studies and such other Boards as may be prescribed by the Statutes.

(2) The constitution, powers and duties of the Boards shall be prescribed by [the Statutes]²⁵.

AFFILIATED COLLEGES

²⁶[24. Affiliated Colleges.—(1) Every college which was an affiliated college on the first day of July, 1953, under and in accordance with the provisions of this Act, shall continue to be such college until the affiliation is cancelled or otherwise withdrawn under this Act.

(2) Notwithstanding anything contained in this Act or in the conditions of affiliation of any affiliated college, it shall not be lawful, so long as the affiliation continues, for an affiliated college having post-graduate classes, to maintain Intermediate classes simultaneously with post-graduate classes :

Provided that any such college which on the first day of July, 1953, was maintaining simultaneously intermediate and post-graduate classes may, at its option, continue both the Intermediate and post-graduate classes so, however, that one or the other of these classes shall cease to be maintained before the expiry of the academic year 1956-57 [or if the State Government so directs, before the expiry of such subsequent academic year as it may by notification in the Official *Gazette* specify from time to time.]²⁷

(3) Without prejudice to the provisions of the foregoing sub-sections, a college not being a college intended exclusively for the education of woman, shall not be affiliated after the commencement of the Agra University (Amendment) Act, 1954, if it maintains classes for preparing students for the Intermediate examination.

(4) Every application for affiliation to the University by a college not already affiliated and every application of an affiliated college for

25. Substituted for the words "Regulations to be made by the Executive Council after consideration of the recommendations of the Academic Board" by U. P. Act

XXXI of 1953, Section 19.
26. Substituted for the old Section 24 by *ibid.* Section 20.
27. Inserted by U. P. Act No. XXVII of 1954, Section 2.

starting courses of instructions for a new degree shall, subject to the provision of clause (i) of sub-section (l) of Section 18, be dealt with in accordance with the Statutes. But nothing in this sub-section shall be deemed to require the previous sanction of the Chancellor under clause (i) aforesaid for the granting of an application of an affiliated college to start instruction in a subject (being a subject in which instruction is not already given) for a Bachelor's degree in respect of which the college is already affiliated and every such application may be dealt with by the Executive Council without reference to the Chancellor.

(5) Every affiliated college shall furnish such reports, returns and other particulars as the Executive Council may call for on its own motion or at the instance of the Academic Council.

(6) The Executive Council shall cause every affiliated college to be inspected from time to time at intervals not exceeding five years by one or more persons authorised by it in this behalf.

(7) The Executive Council may call upon any affiliated college so inspected to take within a specified period such action as may appear to it to be necessary.

(8) The affiliation of an affiliated college which fails to comply with the directions of the Executive Council or to fulfil the conditions of affiliation may be withdrawn in accordance with the provisions of the Statutes.]

²⁸[24-A. (1) It shall be lawful for the University to grant to an affiliated college, which satisfies the conditions prescribed in this behalf by the Statutes, the privilege of varying for the students receiving instruction in such college, the courses of study prescribed by the University, and holding examinations in the courses so varied. The extent to which the courses may be varied and the manner of holding examinations conducted by such college shall be determined in each case by the University. Such a college shall be declared to be an 'Autonomous College' in the manner prescribed by the Statutes.

(2) The University may, under conditions prescribed by the Statutes, recognise an affiliated college, as a 'Working Men's College', for the purpose of providing courses for degrees to persons (otherwise eligible for admission to such courses) who may be unable to enrol as whole-time students by reason of being engaged in business, trade, agriculture or industry, or employed in other forms of service. The course for such students shall extend over a period which shall not be less than one and a half times the prescribed duration thereof. Such courses shall be organized separately.

TEACHERS

²⁹[25. Appointment of teachers of the University and affiliated colleges. (1) There shall be a Selection Committee for each subject of study which shall consist of—

- (i) The Vice-Chancellor, who shall be the Chairman;
- (ii) The Dean of the Faculty concerned;

28. Inserted by U.P. Act XXXI of 1953, Section 24.

29. Substituted for the old Section 25 by *ibid.* Section 21.

- (iii) The Head of Department teaching the subject concerned in the University, or a Principal, or Head of Department of an affiliated college teaching for post-graduate degrees and possessing expert knowledge of the subject, to be nominated by the Academic Council ;
- (iv) two persons possessing expert knowledge of the subject, to be nominated by the Chancellor.

(2) Before nominating the experts referred to in sub-section (1), the Chancellor shall obtain from the relevant Faculties of at least three Universities of India, name of experts in each subject and shall nominate two persons from amongst them.

(3) Teachers of the University shall be appointed by the Executive Council in accordance with the provisions of clause (f) of sub-section (1) of Section 18 on the advice of the Selection Committee concerned. Where the Executive Council disagrees with the advice of the Selection Committee, the matter shall be referred to the Chancellor whose decision shall be final.

(4) Every decision to make a substantive appointment of a teacher in an affiliated college, not being maintained exclusively by Government, shall be reported by the management of the college to the Vice-Chancellor within 15 days from the date thereof with all the applications and connected papers. The continuance of the appointment shall be subject to the approval of the Vice Chancellor who may with the concurrence of the Selection Committee concerned, disapprove of the same, in which case it shall be terminated as soon as may be but not later than the date of expiry of the period of probation.]

25-A. (1) No teacher recruited after the commencement of the Agra University (Amendment) Act, 1953, shall be entitled to impart instruction for a post-graduate degree or to guide research unless he is recognised for these purposes by the Chancellor on the advice of the Selection Committee referred to in sub-section (1) of Section 25.

(2) No teacher recruited before the commencement of the Agra University (Amendment) Act, 1953, shall, with effect from such date not later than one year from the said commencement as the State Government may by notification fix, be entitled to impart instruction for post-graduate degrees or to guide research unless—

- (a) he was recruited to a post carrying the emoluments assigned in accordance with the scales prescribed in the college concerned for teachers intended for post-graduate teaching ; or
- (b) he was recruited expressly for imparting instruction for post-graduate degrees ; or
- (c) he had for a total period of seven years before the said commencement imparted instruction to post-graduate classes ; or
- (d) he has been approved for the purpose by the Chancellor upon the recommendation of the Selection Committee

constituted in accordance with sub-sections (1) and (2) of Section 25.]

Note.—The State Government has fixed July 1, 1954 as the date required under this section vide Notification No. A(2) 1377/XV-67-1954, dated February 26, 1954 published in U. P. Gazette Extraordinary of the same date.

³⁰[25-B. Conditions of service of Officers and teachers.—(1) Subject to the provisions of this Act, the Statutes and the Ordinances every salaried officer and teacher of the University shall be appointed under a written contract which shall be lodged with the University and a copy of which shall be furnished to the officer or teacher concerned.

(2) Any dispute arising out of a contract referred to in sub-section (1) shall, on the request of the officer or teacher concerned, be referred to a tribunal of arbitration whose decision shall be final. Every such request shall be deemed to be submission to arbitration upon the terms of this section within the meaning of the Arbitration Act, 1940 (Act X of 1940) and all the provisions of that Act with the exception of Section 2 thereof shall as far as possible, apply.

(3) The tribunal of arbitration provided for in sub-section (2) shall consist of one member nominated by the Executive Council, one member nominated by the officer or teacher concerned and an umpire appointed by the Chancellor.

(4) The University shall constitute for the benefit of its officers, teachers, clerical staff and other employees, in such manner and subject to such conditions as may be prescribed by the Statutes, such pension, gratuity, insurance and provident fund as it may deem fit.]

³⁰[25-C. (1) Every teacher in an affiliated college, not being a college maintained exclusively by Government, who is recruited after the commencement of the Agra University (Amendment) Act, 1953, shall be appointed under a written contract which will contain such terms and conditions as may be laid down by the Statutes.

(2) Every decision by the management of an affiliated college, other than a college maintained by Government, to dismiss or remove from service a teacher shall be reported forthwith to the Vice-Chancellor and subject to provisions to be made by the Statutes shall not take effect until it has been approved by the Vice-Chancellor]

STATUTES AND REGULATIONS

³¹[26. Statutes.—Subject to the provisions of this Act, the Statutes may provide for any matter relating to the University and shall in particular provide for the following—

- (a) the constitution, powers and duties of the Authorities of the University ;
- (b) the election, appointment and continuance in office of the members of the said Authorities of the University and the filling of vacancies and all other matters relative to those Authorities for which it may be necessary or desirable to provide ;
- (c) the appointment, powers and duties of the officers of the University ;

31. Substituted for the old Section 26 by U. P. Act XXXI of 1953, Section 23.

- (d) the constitution of a pension or provident fund and the establishment of an insurance scheme for the benefit of officers, teachers and other employees of the University and of affiliated colleges;
- (e) the conferment of honorary degrees;
- (f) the withdrawal of degrees, diplomas, certificates and other academic distinctions;
- (g) the establishment, combination, sub-division and abolition of Faculties;
- (h) the conditions under which colleges and other institutions may be admitted to the privileges of the University and be liable to the withdrawal of such privileges;
- (i) the inspection of affiliated colleges;
- (j) the maintenance of a register of registered Graduates;
- (k) the holding of convocation;
- (l) the institution of fellowships, scholarships, medals and prizes; and
- (m) all other matters which are required by this Act to be provided for by the Statutes.]

27. Statutes how made.—(1) The First Statutes shall be those set out in Schedule I.

(2) The Statutes may be amended or repealed or added to by Statutes made by the Senate in the manner hereinafter appearing.

(3) The Senate may of its own motion take into consideration the draft of any Statute submitted to it by one of its own members:

Provided that, in any such case before a Statute is passed affecting the powers, duties or emoluments of any officer teacher, authority or board, the opinion of the Executive Council and a report from the person or body concerned shall be taken into consideration by the Senate.

(4) The Executive Council may propose to the Senate the draft of any Statute to be passed by the Senate. Such draft shall be considered by the Senate at its next meeting. The Senate may approve such draft and pass the Statute, or may reject it or may return it to the Executive Council for reconsideration, either in whole or in part, together with any amendments which the Senate may suggest. After any draft so returned has been further considered by the Executive Council, together with any amendments suggested by the Senate, it shall be again presented to the Senate with the report of the Executive Council, and the Senate may then deal with the draft in such manner as it may think proper.

(5) (a) When the Senate has passed a Statute, it shall be submitted to the Chancellor, who may assent to it, or may withhold his assent, or may refer it back to the Senate for further consideration.

(b) If the Senate rejects the draft of a Statute proposed by the Executive Council, the draft shall be submitted to the Chancellor, who may refer it back to the Senate for further consideration.

- (c) A Statute passed by the Senate shall not become valid until the Chancellor has given his assent thereto.
- (6) The Executive Council shall not propose the draft of any Statute or of any amendment of a Statute—

- (a) affecting the status, powers or constitution of any authority of the University until such authority has been given an opportunity of expressing an opinion upon the proposal. Any opinion so expressed shall be in writing and shall be considered by the Senate and shall be submitted to the Chancellor ;
- (b) affecting the conditions of affiliation of colleges to the University except after consultation with the Academic Council

32[27-A. Ordinances.]—(1) Subject to the provisions of this Act and the Statutes, the Ordinances may provide for any matter permitted by this Act or the Statutes to be provided for by Ordinances and for any other matter, including the giving of religious instruction, which the Executive Council considers it advisable to provide for by Ordinances.

(2) Without prejudice to the generality of the power conferred by sub-section (1), the Ordinances shall provide for the following matters, namely—

- (a) the admission of students to the affiliated colleges and their enrolment as such ;
- (b) the conditions under which students shall be admitted to the degree and other courses and to the examinations of the University and shall be eligible for degrees and certificates ;
- (c) the fees to be charged for courses of study and for admission to the examinations, degrees and certificates of the University ;
- (d) the remuneration and allowances, including travelling and daily allowances, to be paid to examiners, tabulators, inspectors and other persons employed on the business of the University ;
- (e) the number, qualifications, emoluments and the term and conditions of service of teachers of the University ;
- (f) the conditions of the award of fellowships, scholarships, studentships, medals and prizes ;
- (g) the conduct of examinations, including the term of office, the manner of appointment and the duties of examining bodies, examiners and moderators ;
- (h) the conditions of the residence of students ;
- (i) the maintenance of discipline among students ;
- (j) all other matters which by this Act or by the Statutes are required to be or may be provided for by the Ordinances

(3) Ordinances shall be made by the Executive Council but no Ordinance shall take effect until it has been approved by the Chancellor after considering the views of the Senate :

Provided that no Ordinance—

- (i) affecting the admission or enrolment of students or prescribing examinations to be recognised as equivalent to the University examinations ; or
- (ii) affecting the conditions and mode of appointment or duties of examiners or the conduct or standard of an examination or any course of study ;

shall be made, amended, repealed or added to unless a draft of such Ordinance has been proposed or previously approved by the Academic Council.

(4) The Executive Council shall not have power to amend any draft referred to in the proviso to sub-section (3) but may reject the proposal or return the draft to the Academic Council for reconsideration, either in whole or in part, together with any amendments which the Executive Council may suggest. Where the Executive Council rejects the draft, the Academic Council may appeal to the Senate, which shall consider the draft at its next meeting and its decision shall be final.

(5) An Ordinance made by the Executive Council under sub-section (3) shall be submitted, as soon as may be, to the Chancellor and the Senate. It shall be considered by the Senate at its next meeting. The Senate shall have the power, by a resolution passed by a majority of not less than two-thirds of the members present and voting, to reject any such Ordinance or by a simple majority to return the same for reconsideration.

(6) After the Senate has approved an Ordinance, it shall forward its views to the Chancellor who may either allow or disallow it.]

^{27-B.} (1) Notwithstanding anything in Section 27-A, the Executive Council may frame and enforce a temporary Ordinance on any of the matters referred to in sub section (2) of the said section.

(2) An Ordinance framed under sub-section (1) shall have the same force and effect as an Ordinance framed and enforced under and in accordance with Section 27-A, but every such Ordinance shall be submitted to the Senate and the Chancellor and shall cease to operate at the expiration of one year from the date of its enforcement or if the Senate or the Chancellor disapproves it before the expiration of one year, upon such disapproval.]

^{28.} **Regulations** —(1) The Authorities and the Boards of the University may make Regulations consistent with this Act, the Statutes and the Ordinances—

- (a) laying down the procedure to be observed at their meetings and the number of members required to form a quorum ;
- (b) providing for all matters which by this Act, the Statutes or the Ordinances are to be prescribed by Regulations ; and
- (c) providing for all other matters solely concerning such Authorities and Boards as are not provided for by this Act, the Statutes or the Ordinances.

33. Substituted for the old Sections 28 and 29 by U. P. Act XXXI of 1953, Sec. 25.

(2) Every Authority of the University shall make Regulations providing for the giving of notice to the members of such Authority of the dates of meetings and of the business to be considered at meetings and for the keeping of a record of the proceedings of meetings.

(3) The Executive Council may direct the amendment, in such manner as it may specify, of any Regulation made under this section or the annulment of any Regulation made under sub-section (1), by an Authority other than the Senate :

Provided that any Authority or Boards of the University which is dissatisfied with any such direction may appeal to the Chancellor, whose decision in the matter shall be final.

(4) The Executive Council shall make Regulations laying down—

(i) the courses of study for various examinations of the University ;
 (ii) the assignment of subjects to the various Faculties ;
 after receiving drafts of the same from the Academic Council.

The Executive Council may not alter a draft received from the Academic Council but may reject the draft received or return it to the Academic Council for further consideration together with its own suggestions.

(5) No Regulation shall be made in respect of matters which are to be provided for the Statutes and Ordinances under this Act.]

29. [Deleted by Section 25 of U. P. Act XXXI of 1953.]

ADMISSION AND EXAMINATIONS

30. **Admission to University courses** —[(1)]⁸¹ Students shall not be eligible for admission to a course of study for a degree unless they have passed the Intermediate Examination of the Board of High School and Intermediate Education of the [Uttar Pradesh] or of an Indian University incorporated by any law for the time being in force, or an examination recognized by the University as equivalent thereto, and possess such further qualifications (if any) as may be prescribed by the Statutes.

[Provided that a holder of the L. M. P. or L. S. M. F. Diploma of the State Medicinal Faculty, [Uttar Pradesh] may be admitted to a course of study of the M. B. B. S. degree in the Faculty of Medicine, even though he has not passed the examinations referred to in this section].⁸²

⁸³ [(2) The University shall not, save with the previous sanction of the State Government, recognise (for the purpose of admission to a course of study for a degree) any degree conferred by any other University or as equivalent to the Intermediate Examination of the Board of High School and Intermediate Education, Uttar Pradesh, any examination conducted by any other authority].

31. **Conduct of examinations** —(1) Subject to the provisions of the Statutes, all arrangements for the conduct of University examinations shall be made, [****]⁸⁴.

34. Inserted by U. P. Act No. 11 of 1946.
 35. The original Section 30 renumbered as sub-section (1) and a new sub-section (2) instituted by U.P.

- Act XXXI of 1953, Section 26.
 36. The Words "and all examiner shall be appointed by the Executive Council" deleted by *ibid.* Section 27.

(2) If during the course of examination any examiner is for any cause incapable of acting as such, the Vice-Chancellor shall appoint an examiner to fill the vacancy.

³⁷ [(3) At least one-half of the number of paper-setters for each subject of study prescribed for a degree, and as nearly as possible, one-half of the number of examiners appointed in each subject, shall be persons not in the service of the University or an affiliated college.]

³⁸ [(4) The examiners in each subject shall be appointed by the Vice-Chancellor in the manner prescribed by the Statutes.]

³⁹ [(5) Every person appointed as examiner shall, as a condition of appointment, agree that he will not undertake examination work in excess of the limits laid down in the Ordinances.]

ANNUAL REPORT AND ACCOUNTS

32. Annual Report.—The annual report of the University shall be prepared under the direction of the Executive Council, and shall be submitted to, and considered by the Senate at the annual meeting.

33. Budget and annual accounts.—(1) The budget of the University shall be framed by the Executive Council and submitted by it to the [State] Government and also to the Senate at its annual meeting. The Senate shall have the power of passing resolutions in regard to the budget. The Executive Council may, after considering these resolutions, make any changes it considers necessary in the budget and shall communicate these changes in the [State] Government and to the Senate at its next meeting.

³⁹ [(2) The annual accounts and balance-sheet of the University shall be prepared under the direction of the Executive Council and shall be submitted to the State Government for purposes of audit. The State Government shall appoint an Auditor possessing appropriate professional qualifications and engaged in the active practice of his profession and shall determine the scale of his remuneration. After audit the accounts and balance-sheet together with the Audit Report shall be published by the Executive Council in the *Government Gazette* and copies thereof shall be submitted to the Senate and to the State Government.]

⁴⁰ [(3) It shall be lawful for the State Government to require any person, who is found to have spent or authorised the expenditure of funds in excess of the amounts provided in the financial estimates or in violation of any provision of this Act, the Statutes or the Ordinances, to reimburse the amount so spent and the Government may take all such steps as may be deemed necessary.]

SUPPLEMENTARY PROVISIONS

34. Removal from membership of the University.—(1) The Senate may on the recommendation of not less than two-thirds of such members of the Executive Council as are for the time being in India, remove the name of any person from the register of graduates.

39. Substituted by U. P. Act XXXI of 1953 Section 27.

38. Inserted by *ibid.* Section 27.

39. Substituted by U. P. Act XXXI of 1953, Section 28.

40. Inserted by *ibid.* Section 29.

(2) The Senate may remove any person from membership of any authority or board of the University upon the ground that such person has been convicted by a court of law of an offence which, in the opinion of the Senate is a serious offence involving moral delinquency or upon the ground that he has been guilty of scandalous conduct ; and may upon the same grounds withdraw from any person any degree, diploma or certificate conferred or granted by the University.

35. Disputes as to constitution of University authorities or bodies.—If any question arises whether any person has been duly elected, appointed or co-opted as, or is entitled to be, a member of any authority or other body of the University ⁴¹ or whether any decision of the University or any Authority thereof is in conformity with this Act, the Statutes and the Ordinances], the matter shall be referred to the Chancellor whose decision thereon shall be final.

36. Filling of casual vacancies.—[(1)]⁴² All casual vacancies among the members (other than *ex-officio* members) of any authority or other body of the University shall be filled as soon as conveniently may be by the person or body who appointed, elected or co-opted the member whose place has become vacant, and the person appointed, elected or co-opted to a casual vacancy shall be a member of such authority or body for the residue of the term for which the person whose place he fills would have been a members.

⁴³ [(2) A person who is a member of an Authority of the University as a representative of another body whether of the University or outside shall retain his seat on the University Authority so long as he continues to be a member of the body by which he was appointed or elected and thereafter till his successor is duly appointed.]

37. Proceedings of University authorities and bodies not invalidated by vacancies—No act or proceeding of any authority or other body of the University shall be invalidated merely by reason of the existence of a vacancy or vacancies among its members ⁴⁴ [or by reason of some person having taken part in the proceedings who is subsequently found not to have been entitled to do so.]

38. Pension or provident fund—Where any pension or provident fund has been constituted by the University for the benefit of its officers, teachers or other servants, the [State] Government may declare that the provisions of the Provident Funds Act, 1925, shall apply to such fund as if it were a Government Provident Fund.

Note :—The provisions of the Provident Funds Act, 1925 [Act XIX of 1925] applied to the Provident Fund constituted by the Agra University.—See Notification No. 2107-Edu., dated September 13, 1928, in Gazette, 1928, part I, p. 1004.

39. [Deleted by Section 32 of U. P. Act XXXI of 1953.]

TRANSITORY PROVISIONS

40. Completion of courses and examinations for students in colleges associated with the Allahabad University.—Notwithstanding anything contained in this Act or the Statutes, any student in a college

41. Inserted by U. P. Act XXXI of 1953, Section 30.

42. The old Section 36 of the original Act renumbered as sub-section

(1) and a new sub-section (2) inserted by *ibid* Section 31.

43. Inserted by *ibid*. Section 32.

associated with the Allahabad University who immediately before this Act came into force, was studying or was eligible for any examination of the Allahabad University, shall be permitted to complete his course in preparation therefor, and the University shall provide for the instruction and examination of such student in accordance with the Prospectus of Studies of the Allahabad University.

"[40-A.] The State Government may for the purpose of removing any difficulties, in relation to the transition from the provisions of this Act, as it existed prior to its amendment by the Agra University (Amendment) Act 1953, (hereinafter referred to as 'the Amending Act'), to the provisions of this Act, as amended by the Amending Act, by order published in the *Official Gazette*—

- (a) direct that this Act, amended as aforesaid, shall during such period as may be specified in the order take effect subject to such adaptations, whether by way of modification, addition or omission, as it may deem fit to be necessary or expedient ; or
- (b) direct that till such time, not exceeding [eighteen months]⁴⁵ from the commencement of the Amending Act, as the University Authorities are constituted or appointed under and in accordance with this Act, amended as aforesaid, the powers duties and functions, exercisable or dischargeable by such University Authorities shall be exercised and discharged by the corresponding Authorities established on the date immediately before the commencement of the Amending Act; or
- (c) direct that any Statute or Regulation in force at the date immediately preceding the coming into force of the Amending Act shall continue in force subject to such alteration modification, addition or omission, as it may deem fit to be necessary or expedient, until superseded by anything done or any action taken under this Act, as amended by the aforesaid Act ; or
- (d) make such other temporary provision for the purpose of removing any such difficulty as it may deem fit to be necessary or expedient :

Provided that no such order shall be made after [18 months]⁴⁶ from the date of the commencement of the Amending Act.]

Note—The State Government has issued the following Notification under this section :—

41. Appointment of special officer by the [State] Government.—(1) At any time after the passing of this Act, and until such time as the authorities of the University shall have been duly constituted, or until such further time as the Executive Council may desire, a special officer shall be appointed by the [State] Government for the University.

(2) It shall be the duty of the special officer to convene the first meeting of the Senate and of the Executive Council within six months of his assuming charge of his appointment. He shall also draft Statutes

44. Inserted by U. P. Act XXXI of 1953 Section 56.

45. Substituted for the words "one Year" by U. P. Act XXVII of

1954, Section 3.

46. Substituted for words '12 months' by *ibid.*

and Regulations of an urgent nature for submission to the authorities and bodies of the University when they are constituted. He shall be empowered to appoint such clerical and menial staff as may be necessary. No member of the clerical or menial staff shall be permanently employed until his appointment has been confirmed by the Executive Council.

(3) The special officer shall be empowered to incur all necessary expenditure, subject to the approval of the Chancellor.

42. Repeal of certain enactments.—The enactments specified in Schedule I shall be repealed to the extent specified in the fourth column thereof with effect from the date upon which Section 3 is brought into operation.

STATUTES FOR THE AGRA UNIVERSITY

In exercise of the powers conferred by the first proviso to sub-section (2) of Section 1 of the Agra University (Amendment) Act, 1953 (U.P. Act No. XXXI of 1953), the Governor of Uttar Pradesh is pleased to frame the Statutes appended hereto and to direct that the same shall, subject as therein mentioned, come into force from the date of publication of this notification and the Governor is further pleased to direct that any Statutes existing on the date immediately before the publication of this notification in respect of the matters provided for in the Statutes framed as aforesaid shall with effect from the date of the notification stand rescinded, vide Notification No. A (2)-6794/XV-544-1955, dated November 8, 1954, published in U.P. Gazette Extraordinary, dated November 8, 1954.

CHAPTER I

General

1. In these Statutes:

- (a) "Act" means the Agra University Act, 1926;
- (b) "Officers", "Authorities", "Senate", "Academic Council", "Executive Council" and "Finance Committee" mean respectively the Officers, Authorities, Senate, Academic Council, Executive Council and Finance Committee of the Agra University;
- (c) "Section" means a section of the Act; and
- (d) words and expressions not defined in these Statutes and used in the Act shall have the meaning assigned to them in the Act.

2. An "Affiliated College" shall be placed in Class "A" if—

- (1) it is affiliated for the purpose of teaching for a degree in Engineering, Medicine or Veterinary Science; or
- (2) it has sent up candidates for the M. Sc. degree in one of the Sciences or in Agriculture; or
- (3) it has sent up candidates in at least three subjects for any one or more of the degrees M. A., M. Com., LL.M. and M. Ed.

Explanations :

- (i) The examination in different subjects for each of the degrees of M. Com., LL.M., and M. Ed. shall be deemed to be an examination in a single subject.

- (ii) The M. Sc. degree in Mathematics and Agricultural Economics shall be deemed to be equivalent to the M.A. degree for purposes of sub-clauses (2) and (3).
- (iii) Teaching for degrees and diplomas other than those named in this clause (e.g. the LL.B. and B.T. degrees) shall not be taken into account in determining the classification of an institution in Class "A".

3. Affiliated Colleges not belonging to Class "A" shall be placed in Class "B".

4. The Register shall maintain an up-to date list of the Affiliated Colleges of each class, but a college shall be entitled to representation on the University bodies during the twelve months commencing on the 1st of July according to the classification prevailing on the 30th of April preceding.

5. *Seniority of Principals and Teachers.*—(1) The seniority of Principals and Teachers shall be determined by the length of their service reckoned in the manner hereinafter laid down.

(2) Service in each capacity (i.e., as Principal, teacher of the post-graduate classes and teacher of the first degree classes) shall be counted from the date of substantive appointment or of taking over charge in that capacity, whichever is later.

(3) The period of service in each capacity shall be reckoned in whole months, fractions of a month being ignored.

(4) Service in another University or another degree college whether affiliated to the Agra University or to another University shall be taken into account.

(5) Service in a research institution recognised by the University shall be deemed to be service as teacher provided that incumbency of the highest posts only in such institutions shall be deemed to be equivalent to post-graduate teaching.

(6) Only the period during which a teacher has actually taught post-graduate classes in a subject in which the institution where he was employed was affiliated for a post-graduate degree shall count as a period of post-graduate teaching.

(7) Where more than one person becomes entitled under this Statute to the same period of service for purposes of seniority among such persons shall be determined by age.

(8) Subject to the foregoing provisions, the length of service of Principals and Teachers for the purposes of seniority shall be the aggregate of the items detailed below under each class of post.

(a, Principal—

(i) the whole of the period, during which he has been Principal of a degree college (whether with or without post-graduate classes); and

(ii) two-thirds of the period, exclusive of the period of Principalship, during which he has taught post-graduate classes.

(b) Teacher of post-graduate classes—

- (i) the whole of the period during which he has taught post-graduate classes ;
- (ii) half of the period exclusive of the period in head (i) during which he has taught first degree classes ;
- (iii) one year for every three completed years of service as the Head of a post-graduate department ; and
- (iv) one year for holding a lower research degree or having to his credit published research work which is recognised in this behalf by the Selection Committee concerned ; two years for holding a higher research degree and in addition to the period allowed for the lower research degree where both degrees are held.

(c) Teacher of first degree classes—

- (i) the whole of the period during which he has taught first degree classes ; and
- (ii) one year for holding a lower research degree or having to his credit published research work which is recognised in this behalf by the Selection Committee concerned ; two years for holding a higher research degree and in addition to the period allowed for the lower research degree where both degrees are held.

6. The whole period of service which a teacher is entitled to count for the purpose of seniority under this Statute shall be deemed to be as teacher of the subject which he is professing at the time of such reckoning, changes of subject notwithstanding.

7. The Registrar shall prepare and maintain, in respect of each class of persons to whom the provisions of this Statute apply, a list showing the length of service which each individual is entitled to count, for the purpose of seniority in accordance with the provisions of the foregoing clauses, on the 30th day of April of each year. The seniority prevailing on the 30th April shall hold good during the whole of the ensuing academic year, July to June 30, following.

8. *Transitory.* - Clauses 1 to 7 of the Statutes in this Chapter shall, during a period of three years commencing from the date of publication of this notification, have effect as if the words :—

- (1) “Service in a research institution recognised by the University shall be deemed to be service as teacher provided that incumbency of the highest posts only in such institutions shall be deemed to be equivalent to post-graduate teaching” occurring in sub-clause (5) of clause 5 ;
- (2) “or having to his credit published research work which is recognised in this behalf by the Selection Committee concerned” occurring in item (iv) of (b) of sub-clause (8) of clause 5 ; and
- (3) “or having to his credit published research work which is recognised in this behalf by the Selection Committee concerned” occurring in item (ii) of (c) under sub-clause (8) of clause 5,

had not been there.

CHAPTER II

The Senate

A. Class III—Representatives of Donors.

1.—(1) The Registrar shall maintain a separate register in his office showing the donations or gifts of the value of Rs. 2,500 or more and less than Rs. 20,000 received by the University from individuals or associations in the form of cash, or securities or property. The register shall show the name of the donor, and whether the donor is an individual or an association, the form in which the donation is received, the value thereof (which in the case of property shall be calculated at the rates prevailing on the date of gift) and such other details as the Executive Council may from time to time direct.

(2) The names of individual donors shall continue on the register during their life-time, and those of associations for 25 years, and they shall be removed thereafter.

Explanations :

- (i) No amount shall be considered to be donated till it has been actually received by the University.
- (ii) Every donor who makes to the University an annual grant of money, the payment of which is secured by mortgage of immovable property or in such other manner as the Executive Council may approve, shall, subject to the provisions of explanation (v) have the same rights as to membership of and representation on the Senate as if he had been a donor of such sum as represents the capital value of such annual grant ascertained at the rate of interest of $3\frac{1}{2}$ per cent. per annum.
- (iii) When an annual grant is not fully paid up or falls in arrears, the donor shall not be entitled to exercise any of the privileges referred to in the foregoing explanation, unless and until the said arrears are paid up :

Provided that default or delay in respect of payments from property affected by the Zamindari Abolition and Land Reforms Act, shall not disqualify the donor thereof.

- (iv) Where the donors of a sum are more persons than one, who constitute a joint Hindu family or a partnership firm, or a company or corporation, the Registrar shall call upon such donors to elect, within a time to be fixed by him, one of their members, or partners or share-holders as the case may be, to represent and act for them for the purpose of the election. If such donors fail to elect and notify the name and address of the person so elected by them within the time specified in the notice, or within such further time as may be allowed by the Registrar, or are unable to agree as to the person who should represent them for the purpose of voting at the election, the Registrar shall lay the matter for orders before the Vice-Chancellor who may nominate any one of the members, partners or share-holders as the case may be, to represent them at the election for the purpose of voting. The orders of the Vice-Chancellor in this regard

shall be final. The name of the person so elected or nominated to represent such donors shall be entered against the names of such donors in the register and for the purpose of serving all notices of elections, of making nominations of persons to be elected and for voting at the election, the person so noted as the representative of such donors, shall be deemed to be the person entitled to act as one of the electors.

- (v) Where the donor is a minor, or a person suffering from disability, or a ward of the court, the legal guardian of such person shall be entitled to act for him at the election as a voter, so long as the minority or disability continues, or so long as he is the ward of a court. Where the same person is not the guardian of the person and property of a minor, the guardian of the property shall be deemed to be the guardian.
- (vi) The Government of India, the Government of a State in India or the Government of a State or country outside India shall not be entitled to the privileges of a donor by virtue of any donation or grant made to the University.

2. Only donors whose names are on the register on the first day of April of any year shall be entitled to take part in any election held during the twelve months next following.

3. There shall, as nearly as possible, be one member of this class on the Senate for every sum of Rs. 20,000 or its equivalent received by the University from donors entitled to representation provided that—

(1) if at any time the aggregate amount of the donations of persons of this class falls short of Rs. 20,000 but the number of donors is not less than four, there shall be one representative of such donors :

(2) if the total sum received from donors entitled to representation exceeds a multiple of Rs. 20,000 by Rs. 10,000 or more, there shall be one additional representative.

4. A group of donors whose donations amount to Rs. 20,000 or more in the aggregate may elect a representative. Donors who do not elect to choose their representative in the manner aforesaid shall be called upon to elect the remaining number of representatives in the manner laid down in Chapter XI.

5. If at any time the total amount of the donations of individuals and associations entitled to representation under this Statute exceeds rupees two lakhs, the University shall take steps for the revision of this Statute.

B. Class IV.—Representatives of Industries, Commerce, Agriculture, Learned Bodies and the Professions.

The Bodies and interests included in this class shall be represented by five persons to be nominated by the State Government.

C. Class VI.—Representatives of Registered Graduates.

- 1. The Registrar shall maintain in his office a register of Regis-

tered Graduates showing their names, the year in which they took the degree by virtue of which they are entitled to registration, the University or College at which they studied for the degree and such other details as the Executive Council may from time to time direct.

2. Registered graduates shall comprise the following—

- (i) all graduates who were registered for life on the date of the commencement of the Agra University (Amendment) Act, 1953; and
- (ii) graduates of the Agra University who may register themselves for life.

3. The fee for registration as Registered Graduate shall be Rs. 25 to be paid in a lump sum.

4. Every graduate of the Agra University shall be entitled to have his name entered on the register of Registered Graduates at any time after the conferment of a degree on him provided that when an affiliated college becomes affiliated to another University and its *alumni acquire, ipso facto,* the privileges of Registered Graduates in such other University, the names of such graduates shall be removed from the register of Registered Graduates in the Agra University.

D. *Class VII.—Representatives of Teachers.*

1. Teachers of the University of the rank of Professor shall be members of the Senate *ex-officio*, provided that at no time shall the number of such members exceed five. If at any time the number of teachers of such rank exceeds five, the University shall take necessary steps to amend this Statute.

2. (1) Principals of colleges of Class "A" shall be members of the Senate *ex-officio*.

(2) There shall be 25 seats for such Principals on the Senate which shall be increased in case of need by the number of places for teachers of the University under clause 1 which remain unfilled.

(3) In case the number of such Principals exceed the number of seats available under the foregoing sub-clause the Principals of colleges last to become colleges of class "A" shall be left out.

3. There shall be fifteen seats on the Senate for Principals of affiliated Colleges of Class "B". This number shall be increased by the number by which the number of class "A" colleges falls short of the number of seats available under sub-clause (2) of the preceding clause. Such Principals shall become members of the Senate by rotation according to seniority determined in the manner prescribed by the Statutes in Chapter I.

4. There shall be fifteen seats on the Senate for teachers of colleges of class "A". Four of these shall be filled by teachers belonging to the Faculty of Arts, three by teachers belonging to the Faculty of Science, two each by teachers belonging to the Faculties of Commerce and Law and one each by teachers belonging to the Faculties of Medicine, Agriculture, Veterinary Science and Engineering. The seniormost among the members of the Faculty concerned for the time being shall fill these seats, provided that not more than one teacher of a subject shall be eligible at one time.

5. There shall be five seats for teachers of colleges of Class "B". One of these shall be chosen from each of the following regions by an Electoral College formed by the inclusion of one representative of each Faculty in each of these colleges :

- (1) Meerut-Kumaon.
- (2) Agra-Rohilkhand.
- (3) Allahabad-Jhansi-Banaras.
- (4) Lucknow-Faizabad-Gorakhpur.
- (5) Outside Uttar Pradesh.

E. Representatives of the Managements of Affiliated Colleges.

1. There shall be ten seats on the Senate for representatives of the Managements of Affiliated Colleges.

2. An electoral college consisting of one representative of the management of each Affiliated College of Class "A" shall elect five persons, not necessarily from among themselves, but belonging to the management of an Affiliated College of Class "A" to be members of the Senate ; provided that if the number of colleges of this class is more than one-half of the number of colleges of Class "B", this electoral college shall elect six persons.

3. The remaining seats for representatives of managements shall be filled by persons elected by an electoral college consisting of one representative of the Management of each Affiliated College of Class "B".

4. The election shall be conducted according to the system of proportional representation by means of the single transferable vote.

CHAPTER III

The Executive Council

1. The six seats on the Executive Council provided for Deans of Faculties shall be filled as follows :—

- (1) The Deans of the Faculties of Arts, Science, Agriculture and Medicine shall be members *ex-officio*.
- (2) The Deans of the Faculties of Commerce and Law shall be members in alternate terms.
- (3) The Deans of the Faculties of (1) Engineering and (2) Veterinary Science and Animal Husbandry shall be members in alternate terms.

2. The three seats provided for Principals of Affiliated Colleges shall be filled in rotation by such Principals in order of seniority determined in accordance with the Statutes in Chapter I :

Provided that a Principal, who has been a member of the Executive Council whether as Principal or Dean or in any other capacity for a total period of six years or more, shall be deemed to have had his turn.

3. In order to ensure that not more than one person connected with an Affiliated College in any capacity, that is to say, as its Principal

or teacher or as a member of its management shall be on the Executive Council at the same time--

- (1) the Principals who are to be members of the Council shall be determined after the Deans ;
- (2) the members to be appointed by the Academic Council and the Senate shall be chosen thereafter ; and
- (3) the Chancellor's nominees shall be chosen last, with due regard to this requirement of the Act.

4. No person shall be eligible for election as a member to the Executive Council by the Academic Council under Clause (vii) of sub-section (1) of Section 17 of the Act, if—

- (1) he has not been a Principal or a Teacher of post-graduate classes for at least fifteen years, or
- (2) he has already been a member of the Council for six years or more.

CHAPTER IV

Academic Council

1. The Academic Council shall consist of—

- (i) all Deans of Faculties ;
- (ii) all conveners of the Boards of Studies ;
- (iii) all teachers of the University of the rank of Professor and in case the number of such teachers is less than four, such number of teachers of Affiliated Colleges, to be co-opted by the Academic Council, as together with the teachers of the University shall make up a total of five ;
- (iv) five persons not employed in the University or in an Affiliated College possessing expert knowledge of subjects not adequately represented on the Academic Council, to be co-opted by the Academic Council ; and
- (v) the Vice-Chancellor.

2. The Academic Council shall have the following powers, namely —

- (i) to scrutinize and make its recommendations on the proposals submitted by the Boards of Studies through the Faculties in regard to the courses of study and the names of persons for inclusion in the panels of examiners and inspectors ;
- (ii) to report on any matter referred or entrusted to it by the Senate or the Executive Council ;
- (iii) to advise in regard to the recognition of the diplomas and degrees of other Universities and institutions and in regard to their equivalence with the diplomas and degrees of the University or the Intermediate Examination of Uttar Pradesh ;
- (iv) to advise in regard to the qualifications required to be possessed by persons imparting instruction in particular subjects for the various degrees of the University ; and

(v) to perform in relation to academic matters all such duties and to do all such acts as may be necessary for the proper carrying out of the provisions of the Act, the Statutes and the Ordinances.

3. Members, other than the *ex-officio* members, shall hold office for a period of three years, and shall be eligible for co-option again, on the expiry of such period.

CHAPTER V

The Faculties

1. The University shall have the following Faculties, namely—

Faculty of Arts ;
 Faculty of Science ;
 Faculty of Law ;
 Faculty of Commerce ;
 Faculty of Medicine ;
 Faculty of Agriculture ;
 Faculty of Engineering ; and
 Faculty of Veterinary Science and Animal Husbandry.

2. (1) Each Faculty, other than the Faculty of Law, in which there are not less than three colleges affiliated to the University, shall be constituted as follows—

- (i) two teachers of each subject comprised in the Faculty which is prescribed for study up to the post-graduate stage ;
- (ii) one teacher of each subject which is prescribed for study up to the first degree stage only ; and
- (iii) persons not exceeding 10 per cent of the total of categories (i) and (ii) possessing expert knowledge of subjects comprised in the Faculty or subjects allied to them to be co-opted by the Faculty from among teachers of other Universities or officers of Research institutions.

(2) Teachers of the University of the rank of Professor, if any, in the subject shall be members *ex-officio* under heads (i) and (ii) under sub-clause (1) and the remaining teachers shall be chosen by rotation in order of seniority out of the lists maintained in accordance with clause 7 of the Statutes in Chapter I.

3. The Faculty of Law shall be constituted as follows—

- (i) teachers of the University of the rank of Professor belonging to the Faculty, if any ;
- (ii) ten teachers of Law by rotation in order of seniority from among teachers of the Affiliated Colleges ;
- (iii) five Advocates of at least ten years' standing elected by the Bar Council, Uttar Pradesh ;
- (iv) the District Judge of Agra ; and
- (v) two persons co-opted by the Faculty from among teachers of Law of the rank of Professor in the teaching Universities situated in Uttar Pradesh.

4. A Faculty in which there are less than three colleges affiliated to the University shall be constituted as follows—

- (i) teachers of the University of the rank of Professor, if any, in the subjects assigned to the Faculty ;
- (ii) one teacher of each subject comprised in the Faculty in which there is no teacher of the University of the rank of Professor by rotation in order of seniority out of the lists maintained in accordance with clause 7 of the Statute in Chapter I, and
- (iii) one person possessing expert knowledge of each subject other than a subject professed by teachers under item (i) comprised in the Faculty and not belonging to any of the Affiliated Colleges chosen by the Academic Council out of three names proposed by the Faculty.

5. It shall be permissible for a person, who is unwilling to serve in a Faculty, to forego his turn by making a written request to that effect.

6. Members shall hold office for a period of three years provided they continue to be teachers.

7. (1) The person who is the seniormost among the teacher-members of a Faculty provided he is a Principal or is teaching post-graduate classes shall be its Dean for a term or till his retirement provided that he has not already held office as Dean of any Faculty in the University in a substantive capacity for three years or more in the past.

(2) The term of office of the Dean shall be three years.

(3) Where a casual vacancy occurs in the office of Dean for a period exceeding six months, the teacher-member of the Faculty next in seniority to the Dean shall officiate during such vacancy.

8. Subject to the provisions of the Act, a Faculty shall have the following powers—

- (i) to constitute Boards of Studies ;
- (ii) to scrutinize proposals regarding the courses of study and names of suitable persons for inclusion in the panels of examiners and inspectors submitted by the Boards of Studies ;
- (iii) subject to the control of the Academic Council to organize and give directions for research work in the subjects assigned to the Faculty ; and
- (iv) to advise on any question referred to it by the Academic or Executive Council.

CHAPTER VI

Boards of Studies

1. There shall be a Board of Studies in each subject prescribed for a degree provided that the Executive Council may by Regulation, made with the concurrence of the Academic Council, empower the

same Board to deal with two or more allied subjects whether assigned to the same Faculty or to different Faculties.

2. A Board of Studies shall be constituted as follows—

- (i) the member or members representing the subject on the Faculty concerned;
- (ii) two persons having expert knowledge of the subject, elected by the Faculty concerned, who may be teachers of the subject in the teaching Universities situated in Uttar Pradesh or the University of Delhi or be research officers in the subject in any of the Central Government's research laboratories in Delhi; and
- (iii) two teachers of the subject in Affiliated Colleges other than persons coming under (i) above, in order of seniority.

3. The senior member of the Faculty mentioned in sub-clause (i) of clause 2 shall be the convener of the Board.

4. The Boards of Studies shall have the following powers—

- (i) to initiate proposals regarding new courses of study and regarding changes in the existing courses; and
- (ii) to recommend suitable persons for inclusion in the lists of persons eligible for appointment as internal and external examiners respectively for the various degrees and as inspectors in the subject and in the case of a higher degree, in different branches thereof.

CHAPTER VII

Appointment of Examiners

1. Examiners for the first degree shall ordinarily but not necessarily be resident of areas within the territorial jurisdiction of the University.

2. (1) Except in subjects in which practical knowledge is of the first importance, such as banking, the laws of procedure etc. no person shall be eligible for appointment as examiner unless he has experience of teaching the subject for the degree for which he is to be appointed or a higher degree, for a total period of not less than three years or has done research in the subject in a research institution recognised by the University in this behalf for a period of not less than ten years.

(2) No person shall be eligible for appointment as an examiner for a research degree unless he possesses research qualifications and has conducted and guided research for at least ten years.

3. (1) Examiners shall be appointed by the Vice-Chancellor in rotation out of the panels in accordance with this Statute.

(2) The term of office of an examiner other than one appointed for an examination for a research degree shall be three years. An examiner may decline to act as such before the expiry of his term, or the Vice-Chancellor may cut short the term of an examiner on account of unsatisfactory work. In either case the examiner shall be deemed to have exhausted his term of examinership.

Explanations—

- (i) In calculating the period of three years, account shall be taken of examinership in different branches of a subject or in different subjects.
- (ii) An examiner's work shall be deemed to be unsatisfactory if
 - (i) mistakes of such nature and in such number as may be prescribed in the Regulations are found in his work in the course of scrutiny; or (ii) he is found by the Executive Council to have delayed the work without good cause; or (iii) in the opinion of the Executive Council there are reasonable doubts about his integrity or suspicion that he is accessible to examinees or their relations.

4. A list of persons qualified under the above clauses for appointment as examiner for the first degree examination in a subject shall be prepared by the Board of Studies concerned in two parts. The first (or the internal panel) shall include persons in the service of the University and the Affiliated Colleges, and the second part (the external panel) the names of persons not in the service of the University or an Affiliated College.

Similar lists, each in two parts, shall be prepared of persons qualified to be examiners in each subject or major branch of a subject prescribed for the post-graduate degrees.

5. Separate panels shall be prepared for each branch of a subject in which specialised courses are prescribed.

6. The names in the internal panels shall be arranged in order of seniority determined in accordance with the Statutes in Chapter I. The names in the external panels shall be arranged in the order of preference determined by the Executive Council.

7. The Board of Studies shall from time to time submit fresh names of persons who may have acquired the necessary qualifications since the submission of the previous list, and shall report the names of any persons who may have ceased to possess the requisite qualifications, or who may have become incapable of acting as examiners by reason of age, infirmity or other cause.

8. The list shall be as comprehensive as possible, and shall be submitted to the Executive Council through the Faculty concerned and the Academic Council, who will make their recommendations in regard to the names contained therein. The Executive Council shall finally approve the panel after considering the recommendations of the Faculties and the Academic Council and making such changes in it as it deems fit.

9. The internal panel in each subject shall be communicated to the Affiliated Colleges concerned.

10. A person who is qualified to be included in a panel—external or internal may prefer his claim to the Executive Council which shall have it examined by the Academic Council, in consultation with the Board of Studies and the Faculty concerned, and admit or reject the claim on merits.

11. The names of persons whose work is found to be unsatisfac-

tory in accordance with the explanation to clause 3 and of persons who may have ceased to possess the necessary qualification or who may have otherwise become incapable of acting as examiners, shall be removed from the panel and may be restored only in accordance with Statute 10. The decision of the Executive Council shall be final.

12. Notwithstanding anything contained in these Statutes the Executive Council may at any time, either of its own motion, or on an objection made by any person or authority, remove from a panel the name of a person who is not eligible under these Statutes.

CHAPTER VIII

Admission of Candidates to External Degrees

1. There shall be no external degrees in the Faculties of Agriculture, Engineering, Medicine and Veterinary Science. External degrees may be awarded as follows : --

(a) In the Faculty of Arts :

B. A. and M. A. except in Experimental Psychology.

(b) In the Faculty of Science :

M. Sc. in Mathematics.

(c) Faculty of Commerce :

B. Com. and M. Com.

(d) Faculty of Law :

LL.B.

2. The examination for an external degree shall be the same as for the corresponding internal degree.

3. A person to be eligible for admission to an external degree of the University shall be a teacher or an inspecting officer or a woman or a librarian fulfilling all the requirements prescribed for the corresponding internal degree except that of having pursued a regular course of study in an Affiliated College.

4. A person who wishes to appear in the examination for an external degree, shall submit his application in the prescribed form accompanied by the required documents and through the proper channel so as to reach the Registrar by the 15th day of September preceding the examination.

5. The application must be accompanied by a remittance equal to the amount of the fee prescribed by the Ordinances.

6. Applications shall be entertained after the 15th day of September and up to the 15th day of October on payment of a late fee of Rs 5 in each case.

7. The Vice-Chancellor shall deal with such applications and accept or reject them on their merits.

8. The amount paid by an applicant on account of fees, etc., shall be refunded to him after deducting Rs. 2 (for clerical charges) in case his application is rejected.

9. The provisions of clauses 1 to 8 of these Statutes which embody the general conditions of admission of candidates to external degrees shall apply to all classes of candidates for external degrees in addition to any specific provisions made for each class.

CHAPTER IX

Admission of Librarians to Examinations and External Degrees

1. "Librarian" means a person who holds charge of the University Library or a library belonging to an Affiliated College. Only one person may be so designated at one time irrespective of the number of libraries or sections of the library which the University or an Affiliated College may have.

2. A librarian who desires to enter for an examination, shall submit his application in the prescribed form through the head of the institution in which he is employed for the time being and shall send with the application the following—

- (i) a copy of the diploma or the degree possessed by him, duly attested by the Principal of his college or the Registrar ; and
- (ii) a certificate from the Principal of his college or the Registrar to the effect that he has been employed as a whole-time librarian for a period of not less than three years.

Explanations—

(1) If the applicant has served as librarian in more than one institution, he shall furnish a certificate from each such institution, provided that it shall not be necessary to furnish more certificates than are needed to make up the period of three years.

(2) The period of service in an institution during which it was not affiliated to the University shall not be counted.

(3) Periods of service put in by the applicant as a teacher or an inspecting officer which he would be entitled to count as qualifying service for the purpose of admission as a teacher or an inspecting officer to an external degree may be taken into account as qualifying service for the purposes of the Statutes in this chapter.

3. A candidate who ceases to be a librarian after the submission of his application, shall not be admitted to the examination in case he had not completed three years qualifying service under these Statutes before ceasing to be a librarian. If he appears in the examination without complying with these requirements his examination shall be cancelled and the University may take such further action against him as it may deem proper.

CHAPTER X

Administration

[Statutes made under Section 26 (c) of the Act]

1. The Registrar shall be appointed by the Executive Council on the recommendation of a Selection Committee consisting of the Vice-Chancellor, an educationist nominated by the Chancellor and the Chairman of the Public Service Commission, Uttar Pradesh, or one of the members of the Commission named by the Chairman.

2. The Registrar shall be the custodian of the records and of the Common Seal of the University. He shall be the *ex-officio* Secretary of the Senate, the Executive Council, the Academic Council and the Finance Committee, and shall be bound to place before these Authorities all such informations as may be necessary for the transaction of business.

3. He shall make all arrangements for and conduct examinations and be responsible for the due execution of all processes connected therewith.

4. The Registrar shall not be offered nor shall he accept any remuneration for any work save such as may be provided for by the Statutes and the Ordinances.

5. No paid employee of the University shall receive or be offered any honorarium or remuneration for any work done by or entrusted to him except such as may be provided for in the Statutes or the Ordinances.

6. The Registrar may, subject to the previous approval of the Vice-Chancellor, appoint, suspend, dismiss or otherwise punish the clerical staff and inferior servants of the University Office excluding the Confidential Section :

Provided that in every case action taken in the exercise of such powers shall be reported to the Executive Council and any person adversely affected may appeal to the Executive Council.

7. (1) There shall be a Confidential Section of the office of the Registrar in which the work connected with examinations shall be done. The assistants and inferior servants of this section shall be appointed by the Vice-Chancellor and be employed on special terms. They shall be sworn to secrecy and shall be liable to removal without right of appeal if the Vice-Chancellor is satisfied on a report made by the Registrar that there are reasonable doubts about their integrity.

(2) No work of a confidential nature connected with examinations shall be entrusted to any person in the office of the Registrar not belonging to the Confidential Section.

(3) As much work of the following descriptions as possible shall be done by the Confidential Section —

(a) tabulation of the results of examinations ;

(b) collation of results, if tabulated by two sets of tabulators ;

(c) scrutiny of answer-books, where such scrutiny does not require expert knowledge of the subject of examination ;

Provided that in case the results are tabulated by two sets of tabulators, one set of tabulators shall be from the Confidential Section, and the other set may be from amongst persons of suitable standing appointed for the purpose.

CHAPTER XI

Elections : General and by Rotation

1. Wherever election is prescribed by the Act or the Statutes as the method of enlistment of members of any Authority or Body of the University or of any Committee or panel, such election shall except where otherwise provided for by the Act or the Statutes be according to the system of proportional representation by means of the single transferable vote.

The members of Class V of the members of the Senate under Section 14 (1) shall be elected according to the Rules of the Legislative Assembly and the Legislative Council as the case may be.

3. (1) The election of advocates to the Faculty of Law by the Bar Council under clause 5 of the Statutes in Chapter V shall be conducted according to the Rules of Business of the Bar Council and if there are no such Rules bearing on the subject it shall take place at a meeting of the Bar Council ;

(2) Only Advocates of at least ten years' standing shall be eligible for election ;

(3) The five persons among the persons proposed for election who get the largest number of votes shall be deemed to be elected.

4. (1) Election by the Academic Council of a member of the Executive Council under clause (viii) of sub-section (1) of Section 17 and of a member of the Selection Committee in each subject under clause (iii) of sub-section (1) of Section 25 shall take place at a meeting of the Academic Council convened with proper notice of the date, time and business to be transacted.

(2) No person shall be eligible for election as member of the Executive Council whose length of service as a teacher of post-graduate classes reckoned in accordance with the Statutes in Chapter I is less than fifteen years or who has already been a member of the Executive Council for six years or more.

(3) No Principal shall be eligible for election as a member of a Selection Committee whose standing as a teacher of post-graduate classes in the subject reckoned in accordance with the Statutes in Chapter I is less than fifteen years or who has not been engaged in post-graduate teaching during the preceding five years.

5. (1) The Electoral College contemplated in clause 5 of Statute D of Chapter II and in clause 2 of Statute 1 of the same chapter shall be formed only when a general election of members of the Senate under these heads is to take place. The Registrar shall issue notice to the colleges and managements concerned at least thirty days in advance of the date fixed for receiving the names of persons elected to the Electoral College.

(2) When an Electoral College is formed, the Registrar shall notify to each member of such college the number of places to be filled and call for nominations allowing a period of 15 days for the purpose.

6. When a new Senate is formed, it shall be lawful for constituencies to elect members in excess of the number of places to be filled. The persons elected in excess of the required numbers shall be entitled to fill casual vacancies occurring during the term of the persons elected, but there shall be no bye-election to fill casual vacancies.

CHAPTER XII

Election by the Single Transferable Vote

1. In the following cases, election shall be according to the system of proportional representation by means of the single transferable vote (in certain cases from the stage indicated)—

- (1) class III of the members of the Senate (Donors) under Section 14 (1) after donors have exercised the option given by class 4 of the Statutes under head 'A' of Chapter II ;
- (2) class VI of the members of the Senate (Registered Graduates) under Section 14 (1) ;
- (3) representatives of the Managements of Affiliated Colleges of Classes 'A' and 'B' [item (vi) of Class VII of members of the Senate] after the Electoral Colleges have been formed ;
- (4) five persons to be elected by the Senate to serve on the Executive Council under clause (vii) of sub-section (1) of Section 17 ;
- (5) two persons to be elected by the Senate to serve on the Finance Committee, not more than one of whom is to be a member of the Executive Council under clause (iii) of sub-section (1) of Section 20 ;
- (6) teachers of Affiliated Colleges to be elected by the Academic Council to fill such number of five seats on the Academic Council as may not be occupied by teachers of the University of the rank of Professor under clause 1 (iii) of the Statutes in Chapter IV ;
- (7) five external experts to be co-opted by the Academic Council under clause 1 (iv) of the Statutes in Chapter IV ;
- (8) teachers of other Universities to be co-opted by the Faculties as experts under clauses 2 (iii) and 3 (v) of the Statutes in Chapter V ;
- (9) two members of each Board of Studies to be appointed by the Faculty concerned, under clause 2 (ii) of the Statutes in Chapter VI.

2. Election in all cases under clause 1 above excepting those bearing numbers (1) to (3) shall be conducted at meetings of the Authorities concerned, which shall be convened with due notice of the date, time and business to be transacted.

3. The procedure in the election of members of the Senate

mentioned under heads (1) to (3) of clause 1 shall be laid down in the Regulations.

4. The Registrar shall prepare a return of the votes obtained by each person in the manner laid down in the Regulations and announce the result accordingly.

5. Dispute relating to the result of an election shall be dealt with by the Chancellor in accordance with Section 35.

6. Rules for the conduct of the first elections under this Statutes shall be made by the Chancellor.

NOTIFICATIONS

The State Government has issued the following Notifications under Section 40-A :—

(1)

No. A(2)/1376/XV—67-1954, dated February 25, 1954, published in U. P. Gazette Extraordinary of the same date.

In exercise of the powers conferred by clause (b) of Section 40-A of the Agra University Act, 1926 (U. P. Act No. VIII of 1926) the Governor of Uttar Pradesh is pleased to direct that until the authorities mentioned below are constituted or appointed under the said Act as amended by the Agra University (Amendment) Act, 1953 (U. P. Act No. XXXI of 1953), the Executive Council, Academic Board, Faculties and the Boards of Studies, as established on the date immediately before the commencement of the aforesaid Amending Act shall respectively exercise the powers and discharge the duties and functions of the said authorities under the aforesaid Act as amended :

(1) Executive Council,

(2) Academic Council,

(3) Faculties,

(4) Boards of Studies.

(2)

No. A(2)/1378/XV—67-1954, dated February 25, 1954, published in U. P. Gazette Extraordinary of the same date.

The following Order made by the Governor under Section 40-A of the Agra University Act, 1926 (U. P. Act No. VIII of 1926) is hereby published for General information.

The Agra University (Removal of Difficulties) Order, 1954

Whereas certain difficulties have arisen in relation to the transition from the provisions of the Agra University Act, 1926, as it existed prior to its amendments by the Agra University (Amendment) Act, 1953, to the provision of the said Act as amended by the aforesaid amending Act :

Now, therefore, in exercise of the powers conferred by Section 40-A of the said Act as amended, the Governor of Uttar Pradesh is pleased to issue the following Order :

1. (1) This Order may be called the Agra University (Removal of Difficulties) Order, 1954.

(2) It shall come into force at once.

2. During the period of one year from the commencement of this Order the Agra University Act, 1926 shall have effect subject to the following adaptations :

(1) in sub-section (2) of Section 4, the Explanation at the end shall stand omitted ;

(2) in sub-section (1) of Section 14, item (vi) under class II shall stand omitted:

(3) in sub-section (2) of Section 16, clause (b) shall stand omitted:

(4) in Section 18—

(a) in clause (e) of sub-section (1) the words "in accordance with the Statutes and Ordinances relating thereto" shall stand omitted, and

(b) after sub-section (1) the following shall be added as a new sub-section (1-A)—

"(1-A) The Executive Council shall in relation to matters specified in clauses (e) and (f) of sub-section (1) exercise its powers and duties subject to such directions as the Chancellor may issue from time to time;"

(5) clause (iii) of sub-section (1) of Section 20 shall stand omitted:

(6) for sub-section (4) of Section 24 the following shall be substituted:

"(4) Every application for affiliation to the University by a college not already affiliated and every application of an affiliated college for starting courses of instruction for a new degree shall, subject to the provisions of clause (i) of sub-section (1) of Section 18, be dealt with in accordance with the directions of the Chancellor;"

(7) in sub-section (1) of Section 25-C for the words "which will contain such terms and conditions as may be laid down in the Statutes" the words "and be subject to any terms and conditions to be provided in the Statutes"; and

(8) in sub-section (4) of Section 31 for the words "in the manner prescribed by Statutes" the words "on the recommendations of the Executive Council but not so however as to affect the appointment of any examiner made prior to the commencement of the Agra University (Removal of Difficulties) Order 1954" shall be substituted.

(3)

No. A(2)/1379/XV—67-1954, dated February 25, 1954, published in U. P. Gazette Extraordinary of the same date.

In exercise of the powers conferred under clause (d) of Section 40-A of the Agra University Act, 1926, (Act No. VIII of 1926) (hereinafter referred to as the said Act), the Governor of Uttar Pradesh is pleased to direct that the Deans of the Faculties of the Agra University holding offices on the date immediately before the commencement of the Agra University (Amendment) Act, 1953 (U. P. Act No. XXXI of 1953) shall, until the Dean of the respective Faculties are appointed under the said Act, exercise the powers and discharge the duties exercisable or dischargeable by them.

(4)

No. C-463/XV—67-1954, dated February 24, 1954, published in U. P. Gazette Extraordinary of February 24, 1955.

Whereas certain difficulties having arisen in relation to the transition from the provisions of the Agra University Act, 1926, as it existed prior to its amendment by the Agra University (Amendment) Act, 1953, to the provisions of the said Act as amended by the amending Act aforesaid, Agra University (Removal of Difficulties) Order, 1954, was issued with Notification No. A(2)/1378/XV—67-1954, dated February 25, 1954;

And whereas it is necessary to extend the operation of certain provisions of the said Order with the additions and modification herein, in this order, stated;

Now, therefore, in exercise of the powers conferred by Section 40-A of the said Act, as amended up-to-date, the Governor of Uttar Pradesh in pleased to make the following order :

1. (1) This Order may be called the Agra University (Removal of Difficulties) (Second) Order, 1953.

(2) It shall come into force at once.

2. The provisions of the Agra University Act, 1926, mentioned in column 1 shall, during the period specified opposite them in column 2, have effect with the modifications specified in column 3 :

Column 1	Column 2	Column 3
Sub-section (1) of Section 14	till the day following the first meeting of the Senate constituted under the Agra University Act, 1926, as amended by the Agra University (Amendment) Act, 1953.	with the omission of item (vi) under Class II.
Section 18	.. till the Executive Council is constituted in accordance with the provisions of the Agra University Act, 1926, as amended by the Agra University (Amendment) Act, 1953.	with the addition of the following sub-section (1-A) after existing sub-section (1): "(1-A) The Executive Council shall in relation to matters specified in clauses (c) and (f) of sub-section (1) exercise its powers and duties subject to such directions as the Chancellor may issue from time to time."
Sub-section (1) of Section 20.	till the Senate constituted under the Agra University Act, 1926, as amended by the Agra University (Amendment) Act, 1953, holds its first meeting.	with the omission of clause (iii).
Sub-section (4) of Section 31.	30th June, 1955	.. with the words "on the recommendation of the Executive Council but not so as to effect the appointment of any examiner made prior to the commencement of the Agra University (Removal of Difficulties) Order 1954" substituted for the words "in the manner prescribed by the Statutes."

THE UNITED PROVINCES AGRICULTURAL INCOME-TAX ACT, 1948

(As passed by the U. P. Legislature)

(United Provinces Act No. III of 1949)

CONTENTS

<i>Section</i>	<i>Section</i>
1. Short title, extent and commencement.	23. Communication to assessee of orders passed under section 21 or 22.
2. Definitions.	24. Reference of High Court.
3. Charge of agricultural Income-tax.	25. Income escaping assessment.
4. Limit of taxable income.	26. Rectification of mistake.
4A. Computation of total agricultural income.	27. Tax to be collected to the nearest anna.
5. Determination of agricultural income.	28. Power to take evidence on oath.
6. Computation of agricultural income.	29. Power to call for information.
7. Exclusion of income derived from a house or building in occupation of receiver, etc.	30. Tax how payable.
8. Exclusion of income from trust, etc.	31. Penalty for default.
9. Income from waqfs.	32. Recovery of penalties.
10. Assessment of income of undivided Hindu family.	33. Right, title and interest of a member of Hindu undivided family or of other persons on whose behalf property is held, to pass to the purchaser when property is sold for realization of arrears of tax.
11. Assessment to tax on common manager, receiver, etc.	34. False verification.
12. Exemptions from assessment of income-tax.	35. Prosecution at the instance of Collector.
13. Agricultural income accruing in U. P. to persons residing outside U. P.	36. Disclosure of information by public servant.
14. Assessing authorities.	37. Failure to furnish return or to supply information.
15. Return of income.	38. Bar of suit in civil courts.
16. Assessment.	39. Computation of periods of limitation.
17. Penalty for concealment of income.	40. Appearance by authorized representative.
18. Power to assess individual members of certain firms, associations and companies.	41. Service of notices.
19. Tax of deceased person payable by representative.	42. Receipts to be given
20. Notice of demand.	43. Indemnity.
21. Appeal against assessment under this Act.	44. Power to make rules.
22. Revision by Board.	SCHEDULE Rates of Agricultural Income-tax. RULES NOTIFICATIONS

AN

ACT

to provide for the imposition of a tax on agricultural income

Preamble.—Whereas it is expedient to impose a tax on agricultural income in the United Provinces :

It is hereby enacted as follows :—

Prefatory note:—The following extract from the Statement of Objects and Reasons may be usefully noticed—

1. "With the expansion of beneficent activities by the State, it has become necessary to tap fresh sources of revenue. With the rise in prices of agricultural commodities, it is but fit and proper that those who directly derive income from land and its produce should make their contribution to the public exchequer. The soaring prices also make it imperative that effective steps should be taken to check inflation. With these objects in view this Bill is being introduced.

2. "The Bill seeks to levy a tax on incomes from land exceeding Rs. 3,000 per annum. An agriculturist who does not cultivate more than 50 acres of land and has no other agricultural income will be exempt from taxation. Deductions from income will be allowed for rent or revenue paid by the tenant or the zamindar, as the case may be, for expenses incurred in maintaining productive or irrigational works, and for cost of collection. A super-tax will be levied on incomes exceeding Rs. 25,000 per year. The Bill is so designed as not to affect the ordinary cultivator or the smaller zamindars."

For S. O. R. see U. P. Government Gazette Extraordinary, dated October 11, 1948 vide Notification No. 101/1-C dated October 9, 1948, for proceedings of Legislative Assembly see Vol. L, p. 174, Vol. LI, pp. 143, 162, 299—315, 370 and Vol. LX, pp. 30—54, 137—186, 219—238 and 223—254; for proceedings of Legislative Council see Vol. X, pp. 293—354.

CHAPTER I

Preliminary

1. Short title, extent and commencement.—This Act may be called the United Provinces Agricultural Income-Tax Act, 1948.

(1) It extends to the whole of the United Provinces.

(2) It shall be deemed to have come into force on July 1, 1948.

Note:—The Principal Act has been further amended by U. P. Act XVIII of 1954, published in U. P. Gazette Extraordinary, dated October 4, 1954 and Section 1 of the amending Act which runs as below came into force immediately:—

"**1. Short title and commencement.**—(1) This Act may be called the Uttar Pradesh Agricultural Income-Tax (Amendment) Act, 1954.

(2) This section shall come into force at once, and the remaining section shall come into force with effect from July 1, 1954.

Provided that the assessments for the agricultural years ending on or before the 30th day of June, 1954, whether such assessments have or have not been made before the commencement of this Act shall continue to be made as if Sections 4, 6, 15, 16, 25 and the schedule of the U. P. Agricultural Income-Tax Act, 1948 had not been amended by this Act."

Avoidance of Tax:—If a subject can evade payment of tax legally, then it cannot be termed as fraudulent conduct, nor can it be said that he is cheating State of its just revenue. The burden is on the State to prove that it is entitled to a certain revenue before it can recover it, and if the subject can without infringing the law escape liability then the subject certainly can do so and it would be no ground for courts to order recovery of any revenue on the ground that, if the recovery was not ordered, then it would amount to the State being deprived of that revenue. *Jyoti Sarup v. Board of Revenue U. P.*, 1953 A-25—1952 A L J 557—1952 A W R 517 (H. C.).

2. Definitions.—In this Act, unless there is anything repugnant in the subject or context:—

(1) "agricultural income" has the same meaning as is assigned to

it in the Indian Income-Tax Act, 1922, and which in its adapted form is reproduced below :

"agricultural income" means -

- (a) any rent or revenue derived from land which is used for agricultural purposes and is either assessed to land revenue in the United Provinces or is subject to a local rate or cess assessed and collected by an Officer of the Provincial Government ;
- (b) any income derived from such land by
 - (i) agriculture, or
 - (ii) the performance by a cultivator or receiver of rent-in-kind of any process ordinarily employed by a cultivator or receiver of rent-in-kind to render the produce raised or received by him fit to be taken to market, or
 - (iii) the sale by a cultivator or receiver of rent-in-kind of the produce raised or received by him, in respect of which no process has been performed other than a process of the nature described in sub-clause (ii) ;
- (c) any income derived from any building owned and occupied by the receiver of the rent or revenue of any such land, or occupied by the cultivator or the receiver of rent-in-kind of any land with respect to which, or the produce of which, any operation mentioned in paragraphs (ii) and (iii) of sub-clause (b) is carried on :

Provided that the building is on or in the immediate vicinity of the land, and is a building which the receiver of the rent or revenue or the cultivator or the receiver of the rent-in-kind by reason of his connexion with the land, requires as a dwelling-house, or as a store-house, or other out-building ;

(2) "Agricultural income-tax" means tax payable under this Act and includes super-tax ;

(3) "Additional Commissioner" and "Commissioner" mean persons appointed by the Provincial Government to perform the duties of the Additional Commissioner or Commissioner as the case may be under this Act.

[****]¹

(4) "Assistant Collector in charge of a sub-division" and "Collector" have the same meaning as in the United Provinces Land Revenue Act, 1901 ;

(5) "Assessee" means a person by whom agricultural income-tax is payable ;

(6) "Assessing authority" means a person authorized by the Provincial Government to assess agricultural income-tax ;

(7) [Revision Board]² means any authority appointed by the Provincial Government to perform the duties of the [Revision Board]² under this Act ;

1. The proviso to clause (3) of Sec. 2 omitted by U. P. Act XVIII of 1954 and the amendment so made shall have effect from 1st July,

2. 1954, vide S. 2 of *ibid*.
Substituted for the words "Board" by S. 16 of U. P. Act XIV of 1953.

(8) "company" means a company as defined in the Indian Income-tax Act, 1922;

Company—Meaning.—Defined in Act XVIII of 1891, Section 2, Act VII of 1915, Section 2, Act XI of 1922, Section 2. It means an association of a number of individuals for the purpose of carrying on trade or other legitimate business; a number of persons united for the purpose or in joint concern for profit, as a company of merchants; private partnership or incorporated bodies of men; firm, house or partnership, or a corporation. It means a company formed and registered under the Corporation Act or an existing company—Act VII of 1913, Companies Act, Section 2 (2). In its wider connotation means any association or collection or individuals having some object in common.

(9) "firm" has the meaning assigned to it in the Indian Partnership Act, 1932;

Firm—Meaning.—Persons who have entered into partnership with one another are called collectively a "firm"—Indian Contract Act, Section 239; Indian Partnership Act, 1932, Section 4. Persons making an agreement to carry on money lending business and share the profit therefrom, are partners and constitute a firm. *Gokaldas Ram Pratap Marwari v. Kaskeorao Panurao Markate.* 1937 N 134.

Partnership.—Is the relation between persons, who have agreed to share the profits of a business carried on by all or any of them acting for all. Persons who have entered into partnership with one another are called individually "partners" and collectively a "firm".

Difference between Company and Firm :—The chief differences are:—(1) The liability of partners for the debts of the firm is unlimited, while in the case of companies limited by shares; (2) the partners of a firm have a right to take part in the business of a firm, but the members of a company have no such right and the carrying on of the business of the company is entrusted to a select body called the Board of Directors; (3) the death of a partner or the assignment of his interest dissolves the partnership but in the case of a company even though a member dies, the concern is not dissolved but his legal representative steps into the shoes of the dead member; (4) each partner is the agent of the firm and binds it by transactions entered into on its behalf within the scope of the business of the firm; but a member of the company cannot bind the company by his acts; (5) a partner can sue his fellow partners, but a member of company cannot sue his brother members unless they are guilty of fraudulent or *ultra vires* acts; (6) a company has a personality distinct from that of the members composing it.

(10) "landlord" has the meaning assigned to it in the United Provinces Tenancy Act, 1939;

Landlord.—Has been defined in Section 3 (12) U. P. Tenancy Act and means "the proprietor of a mahal, or of a share, or specific plot, therein. In Agra it includes a sub-proprietor, in Oudh, except as otherwise provided in this Act, it does not include an under-proprietor". It does not include a usufructuary mortgagee, *thukdar* or assignee of rent. 1942 RD 69; Muttawalli is not a proprietor even if he is a beneficiary under the waqf. 1940 RD 528.

[(10-A) "Land Reforms Commissioner" means the Officer, appointed as such by the State Government.]³

(11) "person" means an individual or association of individuals, owning or holding property⁴ for himself or for any other, or partly for

3. Inserted by Section 2 of U. P. Act XIV of 1953.

4. The Section 3 of U. P. Act XIV of 1953 is reproduced below:—

"Where doubts have arisen as to the liability of a person to assessment of agricultural income-tax under the Principal Act where such person while owning or holding property in the previous year has

ceased to own or hold it subsequently, it is hereby declared that the words 'owning or holding property' in clause (11) of Section 2 of the Principal Act shall be deemed never to have required such person to continue, to own or hold the property in the year for which the tax is to be charged."

his own benefit and partly for that of another, either as owner, trustee, receiver, manager, administrator or executor or in any capacity recognized by law, and includes an undivided Hindu family, firm or company but does not include a local authority;

(12) "prescribed" means prescribed by rules made under this Act;

(13) "previous year" means the twelve months ending on the 30th day of June preceding the year for which the assessment is to be made;

(14) "principal officer" used with reference to any company or association means—

(i) the secretary, treasurer, manager or agent of the company or association, or

(ii) any person connected with the company or association upon whom the assessing authority has served notice of his intention of treating him as principal officer thereof;

Secretary.—Defined in Act V. 1873, Section 3; Act II, 1876 Section 3; Act V. 1888, Section 4 (8) and 50 (4). It means one entrusted with the management of business. The secretary of a Corporation is one of the general managing agents of the company. See also Section 7 (9-A) of the Indian Companies Act.

(15) "public servant" has the same meaning as in the Indian Penal Code;

(16) "total agricultural income" means the aggregate of the amounts of agricultural income of the different classes specified in Sections 5 and 6 determined respectively in the manner laid down in the said sections and includes all receipts of the description specified in clauses (a), (b), and (c) of sub-section (1) of Section 2, and

(17) "year" means the agricultural year as defined in the United Provinces Tenancy, Act, 1939.

CHAPTER II

Charge of Agricultural Income-tax

3. Charge of agricultural income-tax.—(1) Agricultural income-tax and super-tax at the rate or rates specified in the schedule shall be charged for each year in accordance with and subject to the provisions of this Act and rules framed under clauses (a), (b) and (c) of sub-section (2) of Section 44 on the total agricultural income of the previous year of every person.

(2) Where there is included in the total agricultural income of an assessee any income exempted from agricultural income-tax by or under the provisions of this Act the agricultural income-tax payable by the assessee shall be an amount bearing same proportion to the total amount of the agricultural income-tax which would have been payable on the total agricultural income had no part of it been exempted as the unexempted portion of the total agricultural income bears to the total agricultural income.

Agricultural Income.—for instances of income which are not agricultural see *Province of Bihar v. Maharaja Pratal Udai Naik Sohi Deo*, 1941 P 289; *I. T. Commissioner v. Mathias*, 1937 M 745; *E. V. P. C. Bama*, 51 C 504; *Secretary v. Zamindar of Swayampati*, 45 M 518. "Agriculture" connotes the raising of useful

or valuable products which derive nutriment from the soil with the aid of human skill and labour. *Kunbayun Haji v. Mayan*, 17 M 98.

4. Limit of taxable income.—Agricultural income-tax shall be payable by a person whose total agricultural income of the previous year exceeds [Rs. 4,200]⁶ or, in the case of any society, trust or other association of individuals, such higher figure as may be prescribed :

⁷ [Provided that the tax shall not be payable by a person who cultivates not more than 30 acres of land.]

⁸ [Explanation.—Land covered by a grove or orchard is land cultivated.]

[* * * * *] ⁶

Note :—See Rules 3 and 4 and also Rule 16. The income to be taxable must exceed Rs. 4,200/- . The following persons have been exempted :—

- (a) A person who cultivates not more than 30 acres of land and whose agricultural income from rent or revenue derived from land which is used for agricultural purpose, and is assessed to land revenue in Uttar Pradesh or is subject to a local rate or cess assessed and collected by an officer of the State Government, does not exceed Rs. 50/- . (1st proviso).
- (b) A person, who cultivates not more than 100 acres of land in areas within Jhansi and Kumaon division or in the trans-Yamuna part of the Allahabad, Etawah, Agra, and Mathura districts or in areas south of Kaimur range in the Mirzapur district or in pargana Jaunsar Bawar of the Dehra Dun district and whose agricultural income under clause (a) of sub-section (1) of Section (2) of the Act does not exceed Rs. 50/- per annum (Rule 4). This exemption is subject to the proviso of Rule 4.

⁸ [4-A. Computation of total agricultural income.—In computing the total agricultural income of any individual for the purpose of assessment there shall be included—

- (a) so much of the total agricultural income of a wife or minor child of such individual as arises directly or indirectly ;
- (i) from assets transferred directly or indirectly to the wife by the husband otherwise than for adequate consideration or in connexion with an agreement to live apart ;
- (ii) from assets transferred directly or indirectly to the minor child not being a married daughter by such individual otherwise than for adequate consideration.
- (b) so much of the total agricultural income of any person as arises from assets transferred otherwise than for adequate consideration by such individual for the benefit of his wife or minor child or both].

5. Determination of agricultural income.—The agricultural income mentioned in clause (a) of sub-section (1) of Section 2 shall be deemed to be the sum realized in the previous year on account of

5. Substituted for "Rs. 3,000" by U.P. Act XVIII of 1954 and the amendment shall have effect from 1st July, 1954.
6. The 2nd proviso to Section 4 omitted by U.P. Act XVIII of 1954 and amendment shall have effect from July 1, 1954.

7. Substituted by U.P. Act XVIII of 1954 and the amendment came into force with effect from July 1, 1954 vide Section 1 (2) of *ibid*.
8. Inserted by Section 5 of U.P. Act XIV of 1953 and this section came into force with effect from July 1, 1953 vide Section 1 (2) of *ibid*.

agricultural income mentioned in the said clause (a), after making the following deductions :

- (a) any sums paid in the previous year on account of land revenue, rents, local rates and cesses and [taxes to local authorities]¹⁰ in respect of the entire land from which agricultural income may be derived ;
- (b) collection charges on the sum realized in the previous year at the following rate :

On first Rs. 10,000	12 per cent.
On next Rs. 90,000	11 " "
On any amount above Rs. 1 lakh	10 " "
- (c) any sums paid in the previous year in respect of the land from which such agricultural income is derived in accordance with the provisions of the Northern India Canal and Drainage Act ;
- (d) any expense incurred in the previous year on the construction or maintenance of any irrigation productive or protective work constructed for the benefit of the land from which such agricultural income is derived ;
- (e) any interest paid in the previous year on any mortgage or other capital charge incurred for the purpose of acquiring the property from which such agricultural income is derived ; and
- (f) any *malikana* paid by the assessee in respect of the land from which such agricultural income is derived.

Rent—See Section 3 (18), U.P. Tenancy Act.

Local Rate—was imposed by Section 3 of the U. P. Local Rates Act, 1914. This section has now been substituted by Section 10⁹ of the U. P. District Boards Act, 1922. For a distinction between local rate and cesses see the case *Lachman Singh v. Dhanesh Singh*, 1936 OWN 25. For the rates see *Sheo Ratan v. D. C. Faizabad* 1939 OWN 36.

6. Computation of agricultural income.—(1) The agricultural income mentioned in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1) of Section 2 shall, at the option of the assessee, be computed in accordance with clause (a) or clause (b) of sub-section (2) :

¹⁰ [Provided that the agricultural income as aforesaid for tea gardens shall be computed in accordance with clause (b) of sub-section (2).]

¹⁰ [(2) (a) Subject to such deductions in respect of agricultural calamities as may be prescribed, the income from the land shall be deemed to be an amount equal to its rent multiplied by such multiple not exceeding 12½ as the Land Reforms Commissioner may fix, and different multiples may be fixed for different districts or portions of district and for different classes of groves and orchards :

Provided that the Land Reforms Commissioner may direct that the multiple for calculating income from land newly brought under

9. Substituted for the words "Municipal Taxes" by Section 6 of U.P. Act XIV of 1953.

10. Substituted by U.P. Act XVIII of 1954 and the amendment shall have effect from July 1, 1954 vide Section 1 (2) of *ibid.*

cultivation shall for a specified number of years be such lower figure as may be prescribed.

Explanation—In this section rent shall be deemed to be an amount calculated at the latest sanctioned rent rates applicable to hereditary tenants of the highest class of soil in the village in the case of orchards and groves and of similar class of soil in other cases.]

- (b) the income shall be the gross proceeds of sale of all the produce of the land subject to the following deductions ;
 - (i) any sum paid in the previous year on account of land revenue, local rates and cesses and [taxes to local authorities.]¹¹
 - (ii) any rent paid in the previous year, to a landlord in respect of the land from which the agricultural income is derived ;
 - (iii) any sums paid in the previous year in respect of land from which such agricultural income is derived in accordance with the provisions of the Northern India Canal and Drainage Act ;
 - (iv) the expenses incurred in the previous year in raising the crop from which the agricultural income is derived, in making it fit for market and in transporting it to market, including the maintenance or hire of agricultural implements and cattle required for these purposes ;
 - (v) any expenses incurred in the previous year on the construction or maintenance of any irrigation productive or protective work constructed for the benefit of the land from which the agricultural income is derived ;
 - (vi) any sum paid in the previous year in order to effect the insurance against loss or damage of crops or property from which the agricultural income is derived :

Provided that any amount received in respect of such insurance in any year shall be deemed to be agricultural income for the purposes of this Act and shall be liable to agricultural income-tax after deducting the portion thereof, if any, which has been assessed to income-tax under the Indian Income-Tax Act, 1922.

- (vii) any expenses incurred in the previous year on the maintenance of any capital asset if such maintenance is required for the purpose of deriving the agricultural income ;
- (viii) the cost incurred in the previous year of replacement or of repairs in respect of any capital asset which was purchased or constructed not earlier than two years before the commencement of this Act, for the benefit of the land from which the agricultural income is derived ;
- (ix) any interest paid in the previous year on any amount borrowed and actually spent on any capital expenditure incurred not earlier than two years before the commence-

11. Substituted for the words "Municipal Taxes" by Section 7 of U.P. Act XIV of 1952 and the amend-

ment came into force with effect from July 1, 1953 vide Section 1 (2) of *ibid.*

ment of this Act, for the benefit of the land from which the agricultural income is derived;

- (x) where the land from which the agricultural income is derived is subject to a mortgage or other capital charge, any interest paid in the previous year in respect of such mortgage or charge;
- (xi) any interest paid in the previous year on any secured or unsecured debt incurred for the purpose of acquiring the property from which the agricultural income is derived;
- (xii) any interest paid in the previous year in respect of loans taken under the Land Improvement Loans Act, 1883, or the Agriculturists Loans Act, 1884; and
- (xiii) such other deductions as may be prescribed:

Provided always that no deduction shall be made under this clause if it has already been made under Section 5.

(3) If the assessing authority is satisfied that the proceeds of sale have not been correctly shown by the assessee or that any portion of the produce has not actually been sold, he may assess the value of the produce for purposes of clause (b) of sub-section (1) of Section 2 by determining, to the best of his judgment, the amount of produce and the market value thereof.

Change of option.—The section as originally framed gave the assessee to exercise an option, unfettered, only once after the commencement of the Act. If the assessee had once selected one method of the computation of agricultural income, he could not vary it subsequently in any year without the permission of the Board of Revenue which was given absolute and unfettered discretion to grant or refuse such permission. A consideration of loss in revenue which could justly be collected by the imposition of a tax was not an irrelevant consideration in disposing of an application for permission to change the method of computation of income. The proviso which restricted the change of option has not been omitted by the Amendment Act and Rule 7 which provided a mode of change of option has been deleted. It, therefore, appears that now there are no restrictions on the change of option and it is now open to the assessee to file along with his return of income every year a declaration in Form A. 1. T—2 under Rule 5 and change his option. *Jyoti Prasad v. Board of Revenue, 1953 A 25*

12 [C-A.] Notwithstanding anything in Section 5 or sub-section (1) of Section 6 agricultural income from sale of timber shall be computed in accordance with clause (b) of sub-section (2) of Section 6 after making such further deductions on account of the cost incurred over the maintenance of trees and the capital cost involved as may be prescribed.]

7. Exclusion of income derived from a house or building in occupation of receiver, etc.—In computing agricultural income mentioned in clause (c) of sub-section (1) of Section 2.

(a) no income shall be deemed to accrue from a house or building if it is in actual use and occupation of the receiver of rent or revenue or the cultivator or the receiver of rent-in-kind as the case may be;

(b) any expenses incurred in repairs and maintenance of the building from which the agricultural income is derived shall be deducted from such agricultural income

12. Added by U.P. Act XVIII of 1954 and this section shall come

into force with effect from 1st July, 1951, vide Section 1 (2) of *ibid.*

8. Exclusion of income from trust, etc.—Any income derived from property held under trust or other legal obligation wholly for religious or charitable purposes and, in the case of property so held in part only for such purposes, the income applied or finally set apart for application thereto, shall be exempt from liability to tax under this Act.

9. Income from waqfs.—Income derived from a trust referred to in Section 3 of the Musalman Waqfs Validating Act, 1913, commonly known as *waqf-al-al-aulad* shall be assessed as income of one individual provided that the part of income actually spent on public charitable purposes shall be exempt from liability to tax.

10. Assessment of income of undivided Hindu family.—Tax on agricultural income of an undivided Hindu family shall be so assessed that the share of income which a coparcener would receive upon partition of the family shall be treated as the separate income of each coparcener and shall be liable to tax as such provided firstly, that a father and a son or a son's son how low soever shall be deemed to be one coparcener for the purposes of this section, and provided secondly, that the income derived by a woman from her *stridhan* property shall not be included in the agricultural income of the joint Hindu family.

Joint Hindu Family—Effect :—In case of joint Hindu family each coparcener shall be treated as a separate unit and he would be assessed to the extent of the share that he would get on partition. A father and a son or a son's son how low soever shall be treated as one coparcener and the income of the *stridhan* property shall not be included in the joint family.

Stridhan :—The following may be treated as *stridhan* property :

- (a) Gifts and bequests from relations, *Jadoo Nath v. Basant Coomar* 19 WR 264; *Damodar v. Parmanandas* 7 B 155; *Basant Kumari v. Kamikahya*, 32 IA 181; *Atul v. Sanyasi* 32 C 1051.
- (b) Gifts and bequests from strangers, *Venkata v. Venkata*, 1 M 281, 286; *Salemma v. Lutchmana*, 21 M 100; *Brij Inder v. Janki Kuer* 52 IA 1; *Bai Nurmada v. Bhagwantra* 12 B 505.
- (c) Property obtained on partition. The Allahabad view in *Sripal Rai v. Surajbali*, 24 A 67, that it was *stridhan* has been overruled by their Lordships of the Privy Council in *Debi Mangal Prasad v. Mahadeo Prasad*, 39 IA 121.
- (d) Property given in lieu of maintenance, *Ganpat Rao v. Ram Chunder*, 11 A 296; *Manilal v. Bai Rewa*, 7 B 758.
- (e) Property acquired by inheritance. According to Bombay School only.
- (f) Property acquired by mechanical arts. *Salemma v. Lutchmana*, 21 M 100 (195); *M. Ramkrishna v. Marimuthu*, 38 M 1036.
- (g) Property obtained by compromise. *Soodamini Dasi v. Administrator General of Bengal* 20 IA 12.
- (h) Property acquired by adverse possession. *Mohin Chunder v. Kashi Kant*, 2 CWN 161; *Sham Koer v. Deb Koer* 29 IA 132.
- (i) Property purchased with *stridhan*. *Subramanian v. Arubachilam*, 28 M 1.

11. Assessment to tax on common manager, receiver, etc.—

- (1) Where any person holds land, from which agricultural income is derived, as a common manager appointed under any law for the time being in force or under any agreement or as receiver, administrator or the like on behalf of persons jointly interested in such land or in the

agricultural income derived therefrom, the aggregate of the sums payable as agricultural income-tax by each person on the agricultural income derived from such land and received by him, shall be assessed on such common manager, receiver, administrator or the like, and he shall be deemed to be the assessee in respect of the agricultural income-tax so payable by each such person and shall be liable to pay the same.

(2) **Court of Wards etc.**—In the case of agricultural income taxable under this Act which is received by the Court of Wards, the Administrator General or the Official Trustee, the tax shall be levied upon and recoverable from such Court of Wards, Administrator General or Official Trustee, in the like manner and to the same extent as would be leviable upon and recoverable from any person on whose behalf such agricultural income is received, and all the provisions of this Act shall apply accordingly.

(3) Notwithstanding anything contained in sub-section (1), the appropriate assessing authority may, in his discretion assess the tax directly on the person on whose behalf the agricultural income is receivable by such Court of Wards or Administrator General or the Official Trustee.

12. Exemptions from assessment of income-tax.—Agricultural income-tax shall not be payable by a person on :

- (a) any sum which he receives as a share-holder out of the agricultural income of a company which has certified that it has paid or will pay the tax under this Act in respect of the agricultural income of such Company ;
- (b) any sum which he receives as his share out of the agricultural income of a firm or association of individuals, if the tax under this Act has been levied on the agricultural income of such firm or association ;
- (c) any sum which he receives out of the agricultural income in respect of which tax under this Act has already been levied under section 11 ;
- (d) any sum paid by such person to effect an insurance on the life of such person or on the life of a wife or husband or dependent son of such person or in respect of a contract for a deferred annuity on the life of such person or on the life of a wife or husband or dependent son of such person, as the case may be, provided that the aggregate of any sums exempted under this clause shall not exceed one-sixth of the total agricultural income of the assessee or Rs. 6,000 whichever be the less :

Provided further that nothing contained in this clause shall be deemed to entitle a person who is assessed to income tax under the Income-Tax Act, 1922, to claim any exemption in respect of any sum referred to in this clause if it was exempted under Section 15 of the said Act.

Note :—This section is based on the principle that the same incomes shall not be taxed twice. However, the exemption is limited to 1/6th of the total agricultural income or Rs. 6,000/- whichever be less.

13. Agricultural income accruing in U. P. to persons residing outside U. P.—In the case of any person residing outside the United

Provinces, all agricultural income accruing or arising to such person whether directly or indirectly through or from any land in the Province shall be deemed to be derived within the Province and shall be chargeable to agricultural income-tax in accordance with the provision of this chapter.

CHAPTER III Assessing Authorities

14. Assessing authorities.—(1) For the purposes of this Act, every Collector, and Assistant Collector in charge of a sub-division shall be assessing authority and shall exercise and perform within his revenue jurisdiction such powers and duties as may be prescribed, provided that the Provincial Government may appoint any officer as an assessing authority for such area as may be prescribed.

(2) In particular and without prejudice to the generality of the provisions of sub-section (1), the following authorities shall be the assessing authorities in the cases mentioned against each, namely :

(a) Assistant Collectors in charge of sub-divisions.	Where the gross agricultural income does not exceed Rs. 1 lakh.
(b) Collector	... In all cases.
(c) Officer appointed under proviso to sub-section (1).	In such cases as may be prescribed.

CHAPTER IV Assessment, Deduction and Exemption

15. Return of income.—(1) The Collector shall, on or before the 1st day of November, 1948, or on any such day as may be fixed by the Provincial Government, give notice, by publication in the Official *Gazette* and in such other manner as may be prescribed requiring every person other than a company, whose total agricultural income during the previous year exceeded the maximum amount which is not chargeable to agricultural income-tax, to furnish to such assessing authority and within such period, not being less than thirty days as may be specified in the notice, a return in the prescribed form and verified in the prescribed manner, setting forth (along with such other particulars as may be required by the notice) his total agricultural income during the previous year :

Provided that the assessing authority specified in the notice may in his discretion extend the date for the delivery of the return in the case of any person or class of persons.

(2) The principal officer of every company shall on or before the prescribed date in each year furnish to the Collector a return in the prescribed form and verified in the prescribed manner, showing the total agricultural income of the company during the previous year :

Provided that the Collector may in his discretion extend the date for the delivery of the return in the case of any company or class of companies.

(3) In the case of any person whose total agricultural income is, in the opinion of the assessing authority, such amount as to render such person liable to payment of agricultural income-tax in any year, he may serve in that year a notice in the prescribed form requiring such person to furnish within such period, not being less than thirty days as may be specified in the notice, a return in the prescribed form and verified in the prescribed manner setting forth (along with such other particulars as may be provided for in the notice) his total agricultural income during the previous year:

Provided that the assessing authority may in his discretion extend the date for delivery of the return.

[(3-A) Where the notice served under sub-section (3) is subsequently discovered to be defective and it is necessary to serve a fresh notice the same may still be served notwithstanding that the year may have expired provided that the former was served in time].¹³

[(3-B) Along with the notice under sub-section (3) the assessing authority shall send a statement showing a provisional estimate of the agricultural income which in his opinion accrued to the person during the previous year. The estimate shall be prepared in accordance with the provisions of clause (a) of sub-section (2) of Section 6 and be in such form and contain such particulars as may be prescribed].¹⁴

(4) If any person having furnished a return under sub-sections (1), (2) or (3) discovers any omission or wrong statement therein, he may furnish a return or a revised return, as the case may be, at any time before the assessment is made and any return so made shall be deemed to be made in due time under this section.

Note :—See Rules 20, 21, 22 and 23. This section is analogous to Section 22 Income-Tax Act.

Notice :—The Collector has to give a notice under sub-section (1), but if a notice is given under sub-section (3) then the notice must allow a period of thirty days for the furnishing of return. If such notice is not given, it is illegal and a subsequent extension of time will not cure it. *Fumna Dhar Poddar v. IT Commissioner* 1953 L 201. See also *Kanji Mai v. IT Commissioner*, 1930 A.L.J. 78; *Kajori Mai v. Kalyan Mai* 1930 A 209. Service may be made by registered post *Deo Quza*, 54, A 548 or on a recognised agent. *Sawler Lal v. IT Commissioner*, 1931 p 282.

Period of notice—Effect :—Section 15(3) requires that a notice shall be served on any person, whose total agricultural income is such amount as to render him liable for payment of the tax in that year. This notice shall be served by the assessing authority in the prescribed form requiring such person to furnish a return of his total agricultural income within such period, not being less than thirty days as may be specified in the notice. Rule 22 provides that the period within which the return has to be made has to be specified in the notice and it should not be less than thirty days or more than forty five days. This does not mean that the period within which the return is to be made is forty five days. If the period specified in the notice is thirty days and the return is filed after thirty days although before expiry of forty five days, the return would be beyond time. *Daya Shanker v. Commissioner A.I.T.* 1953 A 322.

16. Assessment.—(1) If the assessing authority is satisfied that a return made under Section 15 is correct and complete he shall assess the total agricultural income of the assessee, and shall determine the sum payable by him on the basis of such return.

13. Inserted by Section 8 of U. P.

Act XIV of 1953.

14. Inserted by U. P. Act XVIII of

1954 and this new sub-section shall have effect from 1st July, 1954, vide Section 1 (2) of *ibid*.

(2) If the assessing authority has reason to believe that a return made under Section 15 is incorrect or incomplete, he shall serve on the person who made the return a notice requiring him on the date to be specified therein either to attend at the office of the assessing authority or to produce or to cause to be produced any evidence in support of the return.

(3) On the day specified in the notice issued under sub-section (2) or as soon afterwards as may be, the assessing authority, after seeing such evidence as such person may produce and such other evidence as the assessing authority may require on specified points, shall by an order in writing assess the total agricultural income of the assessee and determine the sum payable by him on such assessment.

(4) If the principal officer of any company or other person fails to make a return under sub-sections (2) or (3) of Section 15, as the case may be, or, having made the return, fails to comply with all the terms of the notice issued under sub-section (2) of this section or to produce any evidence required under sub-section (3) the assessing authority shall make the assessment to the best of his judgment [with due regard to the assessment, if any, sent under sub-section (3-B) of Section 15 notwithstanding any option exercised under sub-section (1) of Section 6.]¹⁵

Provided that before making such assessment, the assessing authority may allow the assessee such further time as he thinks fit to make the return or comply with the terms of the notice or to produce the evidence.

Note :—This section is analogous to Section 23, Income-Tax Act.

Sub-section (1):—If the return has been accepted as correct, the Income-Tax Officer is bound to assess on that basis. *The Asoka Mills Ltd., v. IT Commissioner.* 6 ITC 339. See also *IT Commissioner, v. Achhrumal.* 1938 N 455.

Sub-section (2):—The assessee has been given three alternatives, (1) to attend in person, (2) to produce any evidence or (3) to cause to be produced any evidence, and therefore if the notice under Section 16 (2) scores out "or to produce or to cause to produce any evidence", the notice is irregular. *Rajmani Devi v. IT Commissioner.* 1937 A 770. The word 'evidence' is comprehensive enough to cover circumstantial evidence. *Paras Das v. IT Commissioner.* 1938 L 269. When an assessee does not produce any vouchers and other materials which may enable a detailed check of his account books, they are not of much value. *Badri Sha v. IT Commissioner.* 1936 L 856. Section 16 (2) will have application to bona fide return though there may be some omissions, but not to a case of deliberate omission to furnish particulars available with the assessee. *A. R. Channilal.* 1933 A 197. Where the Income-Tax Officer is not satisfied with a return he has to serve a notice under this sub-section. *Nirmal Kumar v. Secretary of State.* 1925 C 890. Even if the assessee denies the existence of accounts the Income-Tax Officer can presume their existence. *Lachman Prasad v. Babu Ram* 1930 A 49(F. B.)

Where the assessee is not given an opportunity to contest and disprove that they were members of a joint Hindu family, the assessment is invalid. *Radhelal Balmukund.* 1931 A 23.

Sub-section (3):—The "other evidence" means evidence which the Income-Tax Officer may require from the assessee and of which he may give him notice specifying the points and requiring its production. *Messrs Lachmandas Naraindas v. IT Commissioner.* 2 ITC 1. See also 4 ITC 48 and 2 ITC 302. No positive proof is to be adduced by the Income-Tax Officer that the accounts are unreliable, as he is not a party to the case and cannot be expected to be in possession of such evidence. *Gangaram v. IT Commissioner.* 1937 L 721. If no better evidence is forthcoming

15. Inserted by U.P. Act XVIII of 1954 and the amendment shall have effect from 1st July, 1954, vide Section 1 (2) of *ibid.*

the Income-Tax Officer can act upon the assessment of the previous year. *Gopi Nath v. Income-Tax Commissioner* 58 A 200. Although the Income-Tax Officer is not entitled to make a guess without evidence, still where the assessee does not give correct return, his estimate holds good, *IT Commissioner v. Kameshwar Singh* 66 IA 146, of course the basis of his computation must be mentioned otherwise the assessment would be illegal. *Radhey Lal v. Balmukund*, 52 A 991.

Sub-section (4):—"Best of his Judgment" for meaning see the following cases *Commissioner of Income Tax v. Bari Das Bamrai*, 1937 OWN 484=64 IA 102; *Abdul Bari Choudri v. IT Commissioner*, 1931 R 194; *Munarak Ali v. Commissioner* 1938 L 867; *Tulsidas Nagien das v. IT Commissioner*, 1938 L 551.

17. Penalty for concealment of income.—(1) If [the Revision Board, Commissioner, Additional Commissioner or]¹⁶ an assessing authority in the course of any proceedings [before it or him]¹⁷ under this Act is satisfied that an assessee has concealed the particulars of his agricultural income or has deliberately furnished inaccurate particulars of such income and has thereby returned it below its real amount, he may direct that the assessee shall, in addition to the agricultural income-tax payable by him by way of penalty a sum not exceeding the amount of agricultural income-tax which would have been avoided if the agricultural income so returned by the assessee had been accepted as the correct income :

Provided that no such order shall be made unless the assessee has been heard or has been given a reasonable opportunity of being heard :

Provided further that no prosecution for an offence against this Act shall be instituted in respect of the same facts on which a penalty has been imposed under this section.

(2) If the [Revision Board,]¹⁸ Commissioner, Additional Commissioner, or Collector makes an order under sub-section (1) he shall forthwith send a copy of the same to appropriate assessing authority.

Penalty:—No penalty can be imposed unless a notice is served on the assessee to show cause against the imposition. *Banarsi Das v. IT Commissioner* 1926 L 585.

18. Power to assess individual members of certain firms, associations and companies.—(1) Where the assessing authority is satisfied that any firm or other association of individuals carrying on any business (other than a joint Hindu family, a Muslim *waqf* referred to in Section 3 of the Musalman Waqfs Validating Act, 1913, or a company) is under the control of one member thereof, and that such firm or association has been formed or is being used for the purpose of evading or reducing the liability to agricultural income tax of any member thereof, he may, or if he is an Assistant Collector in charge of a sub-division with the previous approval of the Collector of the district concerned, passed an order that the sum payable as agricultural income-tax by the firm or association shall not be determined, and thereupon the share of each member in the agricultural income of the firm or association shall be included in his total agricultural income for the purpose of his assessment thereon.

Explanation—A member of a firm or association who owns the whole or the major portion of the capital of the firm or association

¹⁶. Inserted by Section 9 of U. P. Act XIV of 1935.

¹⁷. Substituted for the words "before him" by Section 9 of U. P. Act

XIV of 1953.

¹⁸. Substituted for the word "Board" by Section 16 of U. P. Act XIV of 1953.

shall not by reason only of that fact be deemed to control the firm or association.

(2) Where the Collector is satisfied that a company is under the control of not more than five of its members and that its agricultural income is allowed to accumulate beyond its reasonable needs, existing and contingent, having regard to the maintenance and development of its business, without being distributed to the members, or that a reasonable part of its agricultural income, having regard to the said needs, has not been distributed to its members in such manner as to render the amount distributed liable to be included in their total agricultural income and that such accumulation or failure to distribute is for the purpose of preventing the imposition of agricultural income-tax upon any of the members in respect of their shares in the agricultural income so accumulated or not distributed, the Collector may, with the previous approval of the Commissioner of the area concerned, pass an order that the sum payable as agricultural income-tax by the company shall not be determined, and thereupon the proportionate share of each member in the agricultural income of the company, whether such agricultural income has been distributed to the members or not, shall be included in the total agricultural income of such member for the purpose of his assessment thereon :

Provided that this sub-section shall not apply to any company which is a subsidiary company or in which the public are substantially interested.

*Explanation.—*For the purposes of this sub-section :

- (a) a company shall be deemed to be a subsidiary company if, by reason of the beneficial ownership of shares therein, the control of the company is in the hands of a company, not being a company to which the provisions of this sub-section apply, or of two or more companies none of which is a company to which those provisions apply ;
- (b) a company shall be deemed to be a company in which the public are substantially interested if shares of the company, not being shares entitled to a fixed rate of dividend, whether with or without a further right to participate in profits, carrying not less than twenty-five per cent of the voting power have been allotted unconditionally to, or acquired unconditionally by, and are at the end of the previous year beneficially held by, the public (not including the company to which the provisions of this sub-section apply), and if any such shares have in the course of such previous year been subject of dealings in any stock exchange in India or are, in fact, freely transferable by the holders to other members of the public ;
- (c) unless the contrary is proved a company shall be deemed to be under the control of any person or group of persons where the majority of the voting power or shares is in the hands of such persons or group of such persons or of relatives or nominees of such persons or group of such persons ;
- (d) "nominee" means a person who may be required to exercise his voting power on the directions of, or holds share directly or indirectly on behalf of another person.

(3) The Commissioner shall not give his approval to any order proposed to be passed by the Collector under this section, until he has given the firm, association or company concerned an opportunity of being heard.

(4) (i) Where any member of a firm or association of individuals makes default in the payment of agricultural income-tax on his share of agricultural income which has been included in his total agricultural income under the provisions of sub-section (1), such agricultural income-tax may be recovered from the firm or association, as the case may be.

(ii) Where the proportionate share of any member of a company in the undistributed agricultural income of the company has been included in his total agricultural income under the provisions of sub-section (2), the agricultural income-tax payable in respect thereof shall be recoverable from the company and may be recovered from such member, if there are not sufficient funds in the hands of the company to pay the tax, or if the winding up of the company has commenced.

(iii) Where agricultural income-tax is recoverable from a company, firm or other association under this sub-section, a notice of demand shall be served upon it in the prescribed form showing the sum so payable, and such company, firm or association shall be deemed to be the assessee in respect of such sum, for the purposes of Chapter V.

(5) Where the agricultural income-tax has been paid in respect of an undistributed agricultural income of a company under this section and such agricultural income is subsequently distributed in any year, the proportionate share therein of any member of the company shall be excluded in computing his total agricultural income of that year.

Note.—See Rule 24.

19. Tax of deceased person payable by representative.—(1) Where a person dies, his executor, administrator or other legal representative shall be liable to pay, out of the estate of the deceased person, to the extent to which the estate is capable of meeting the charge, the agricultural income-tax assessed as payable by such person, or any agricultural income-tax which would have been payable by him under this Act if he had not died.

(2) Where a person dies before the publication of the notice referred to in Section 15 (1), such publication shall be deemed to apply to his executor, administrator or other legal representative and the assessing authority may proceed to assess the total agricultural income of the deceased person as if such executor, administrator or other legal representative were the assessee.

(3) Where a person dies before he is served with a notice under sub-section (3) of Section 15 or Section 16, as the case may be, the assessing authority may serve such notice on his executor, administrator or other legal representative and may proceed to assess the total agricultural income of the deceased person as if such executor, administrator or other legal representative were the assessee.

(4) Where a person dies, without having furnished a return which he has been required to furnish under the provisions of sub-section (3) of Section 16 or Section 16 or having furnished a return which the assess-

ing authority has reason to believe to be incorrect or incomplete, the assessing authority may make an assessment of the total agricultural income of such person and determine the tax payable by him on the basis of such assessment, and for this purpose may require from the executor, administrator or other legal representative of the deceased person any accounts, documents or other evidence which he might under the provisions of sub-sections (2) and (3) of Section 16 have required from the deceased person.

Note :—This is analogous to Section 24-B Income-Tax Act.

20. Notice of demand.—When the assessing authority has determined the sum payable by an assessee under Section 16 or when an order has been passed under Section 17 for the payment of penalty, the assessing authority shall serve on the assessee a notice of demand in the prescribed form specifying separately the amount of tax and penalty.

Note :—See Rule 26.

21. Appeal against assessment under this Act.—(1) Any assessee objecting to the amount or rate at which he is assessed under Section 16 or under Section 18, or denying his liability to be assessed under this Act or objecting to any order against him under Section 17 [or Section 37]^[19] made by the assessing authority, may appeal to the Commissioner who may either himself decide the appeal or transfer it to the Additional Commissioner.

(2) Every appeal under this section shall be presented within the prescribed period, but the authority before whom the appeal is filed may admit an appeal after the expiration of the prescribed period, if it is satisfied that the appellant had sufficient cause for not presenting it within the prescribed period.

(3) The authority before whom the appeal is pending shall fix a day and place for the hearing of the appeal and may, from time to time, adjourn the hearing and make such further enquiry as it thinks fit.

(4) Every appeal under this section shall be presented in the prescribed form and shall be verified in the prescribed manner.

(5) In disposing of an appeal, the appellate authority may—

(a) in the case of an order of assessment, confirm, reduce, enhance or annul the assessment or set aside the assessment and direct the assessing authority to make a fresh assessment after such further enquiry as may be directed, and

(b) in the case of an order under Section 17, confirm, cancel or vary such orders :

Provided that no enhancement of an assessment shall be made under this section, unless the appellant has had a reasonable opportunity of showing cause against such enhancement.

19. Inserted by Section 10 of U.P. Act XIV of 1953.

Note :—This is analogous to Section 40, Income-Tax Act. For Rules see Rules 24 and 25.

Appeal :—Assessment for two years, separate appeal should be filed. *Karan Chand v. I. T. Commissioner*, 1931 L 601. Plea not taken before the Income-Tax Officer cannot be raised in appeal. *Nawal Kishore v. I. T. Commissioner*, 1930 L 1040. After an appeal has been admitted no new matter can be raised in the form of additional grounds. *Ram Radha v. I. T. Commissioner*, 1937 L 830. But see *I. T. Commissioner v. Behari Lal*, 1937 O 416 for the contrary view. An appeal once filed cannot be withdrawn. *I. T. Commissioner v. Nawaz Shah*, 1938 L 741.

22. Revision by Board.—(1) The [Revision Board]²⁰ may, on their own motion or on an application, call for the record of any proceeding under this Act pending before or decided by any authority subordinate to the [Revision Board]²⁰ and after such inquiry as they deem necessary, may pass such orders as they think fit :

Provided that the [Revision Board]²⁰ shall not pass any order prejudicial to an assessee without giving him a reasonable opportunity of being heard.

(2) Any order passed by the [Revision Board]²⁰ under sub-section (1) shall, subject to any reference that may be made to the High Court under Section 24, be final.

23. Communication to assessee of orders passed under Section 21 or 22.—An authority passing any final order under Section 21 or Section 22 shall communicate such order to the assessee [and the prescribed authority]²¹.

24. Reference to High Court.—(1) If in any proceeding other than a proceeding under Chapter VI, a question of law arises, the [Revision Board]²⁰ may, either on their own motion or on reference from any assessing authority subordinate to the [Revision Board],²⁰ draw up a statement of the case and refer it, with their opinion, to the High Court.

(2) Within sixty days of the communication of an order under Section 21 or Section 22, the assessee may, by application accompanied by a fee of one hundred rupees or such lesser sum as may be prescribed, apply to the [Revision Board]²⁰ to refer to the High Court any question of law arising out of such order or decision, and the [Revision Board]²⁰ shall, within sixty days of the receipt of such application, draw up a statement of the case and refer it, with their opinion to the High Court :

Provided that in computing the period of sixty days from the date on which the assessee was served with the notice of the order under Section 21 the time during which any proceedings under Section 22 in respect of the said order were pending shall be excluded :

Provided further that a reference from an order under Section 22 shall lie only on a question of law arising out of that order itself :

Provided further that the [Revision Board]²⁰, in exercise of their power of revision under Section 22, may decide the question raised in the application and may thereupon reject the application or may refuse

20. Substituted for the word "Board" by Section 16 of U. P. Act XIV of 1953.

21. Inserted by Section 11 of U. P. Act XIV of 1953.

to state the case on the ground that no question of law arises or that it is time-barred or is otherwise incompetent.

(3) If the [Revision Board] ²² reject an application or on any other ground refuse to make a reference, they shall communicate such order to the assessee.

(4) If the [Revision Board] ²² reject the application under sub-section (2) or refuse to state the case on such application, the assessee may within three months of the communication of the order under sub-section (3) apply to the High Court and the High Court may, if it is not satisfied about the correctness of the decision of the [Revision Board] ²² require the [Revision Board] ²² to state the case and refer it and on receipt of such requisition the [Revision Board] ²² shall state and refer the case to the High Court.

(5) If the assessee does not apply to the High Court under sub-Section (4), the fee deposited by him under sub-section (2) shall be refunded.

(6) If the High Court is not satisfied that the statement in a case referred under this section is sufficient to enable it to determine the question raised thereby the Court may refer the case back to the [Revision Board] ²² to make such additions thereto alterations therein as the court may direct in that behalf.

(7) The High Court upon the hearing of any such case shall decide the questions of law raised thereby and shall deliver its judgment thereon containing the grounds on which such decision is founded and shall send to the [Revision Board] ²² a copy of such judgment under the seal of the court and the signature of the Registrar ; and the [Revision Board] ²² shall dispose of the case accordingly, or if the case arose on a reference from any assessing authority subordinate to the [Revision Board] ²² shall forward a copy of such judgment to such authority who shall dispose of the case in accordance with such judgment.

(8) In any reference to the High Court under this section the costs shall be in discretion of the court.

(9) Notwithstanding that a reference has been made under this section to the High Court, proceedings for the assessment and recovery of the agricultural income-tax may be continued :

Provided that if the amount of an assessment is reduced as a result of such reference, the amount overpaid shall be refunded with such interest as may be prescribed.

(10) Section 5 of the Indian Limitation Act, 1908 shall apply to the application to the High Court by an assessee under the provisions of this section.

Note :—This section is analogous to Section 66, Income-Tax Act For Rules see Rule 26.

Sub-section (1)—This is not intended to benefit an assessee, but is merely to enable the Revision Board, when he feels any difficulty with regard to a question of law to refer a matter himself to the High Court. *S. A. Subbiah Iyer v. I. T. Commissioner*, 1930 M 4498 (F. B.)=53 M 510. It does contemplate a reference at the instance of an assessee. *Mohd. Farid v. I. T. Commissioner*, 1935 Lah. 513. In making the reference additional questions besides the matter formulated may

22. Substituted for the word "Board" by Section 16 of U. P. Act XIV of 1953.

have referred. *Beli Ram and Bros. v. I. T. Commissioner*, 1925 L 681. No review lies against the judgment of the High Court. *Kajori Mal Kalyan Mal*, 1930 A 209.

Sub-section (2)—An application under this sub-section can only be made after orders under Section 21 or Section 22 have been communicated. A fee of Rs. 100 has to be deposited along with the application, not for each question raised. 1925 R 94. Joint application on a common question of law by different assessee is not competent. *I. T. Commissioner v. Mohaj Ganga Raja* 50 M 335.

Sub-section (4) — Parties:—In an application under Section 24 (4) of the Agricultural Income-Tax Act, the opposite party should be the U. P. Government and not the Commissioner Agricultural Income-Tax, who is merely an appellate court from an order made by the assessing authority. *Ibid.*

25. Income escaping assessment.—If for any reason any agricultural income chargeable to agricultural income-tax has escaped assessment for any year or has been assessed at too low a rate, the assessing authority may at any time within [two years of the expiry] ²³ of that year, serve on the person liable to pay agricultural income-tax on such agricultural income or, in the case of a company on the principal officer thereof, a notice containing all or any of the requirements which may be included in a notice under [sub-section (3) and (3-B)]²⁴ of Section 15 and may upon service of such notice proceed to assess or re-assess such income, and the provisions of this Act shall, so far as may be, apply accordingly as if the notice were a notice issued under that sub-section :

Provided that the tax shall be charged at the rate at which it would have been charged if such income had not escaped assessment or full assessment, as the case may be.

Note:—This section is analogous to Section 34, Income-Tax Act.

Scope—The Income-Tax Officer has power to re-open the assessment if certain state of facts exists, but if he re-opens without its existence he is acting without jurisdiction. *Ramjidas v. Mahaliram*, 62 C 1011. In deciding whether income has escaped assessment the Income-Tax Officer must not act on suspicion or conjecture ; he must decide the question upon a fair and reasonable consideration of such information and materials as are available to him, but he shall indicate to the assessee the nature of the alleged escapement so as to enable him to identify and explain. *H. Duni Chand*, 56 C 39.

Escape Assessment—For meaning see the cases *Madan Mohan Lal*, 16 L 937; *Amir Singh v. I. T. Commissioner*, 1935 L 301; *Newal Kishore v. I. T. Commissioner*, 1936 L 897; *Nun Chand Doga*, 58 C 1204; *Ganesh Das*, 8 L 675. It applies to cases where the Income-Tax Officer has wrongly assessed as well as to cases where he has omitted to assess. *I. T. Commissioner v. Shri Krishna*, 49 M 22= 1926 M 286.

26. Rectification of mistake.—(1) Any authority which passed an order of assessment or an order in appeal or revision may, on his own motion or on an application by the assessee at any time within one year from the date of such order, rectify any mistake apparent on the face of the record of the assessment appeal or revision, as the case may be :

Provided that no such rectification shall, if it has the effect of enhancing the assessment, be made unless the assessee has been given reasonable opportunity of being heard.

(2) Where any such rectification has the effect of reducing the assessment, the assessing authority shall refund the excess amount to the assessee.

23. Substituted for the words "one year of the end" by Section 12 of U. P. Act XIV of 1953.

24. Substituted for the words and figures "sub-section 3" by U. P. Amendment Act XVIII of 1954.

(3) An order under sub-section (1) which has the effect of enhancing the assessment, shall be deemed to be an order under Sections 16, 21 or 22, as the case may be, and the provisions of this Act shall, in so far as may be applicable, apply to such order.

Note:—This is analogous to Section 35 of the Income-Tax Act.

27. Tax to be collected to the nearest anna.—In the determination of the amount of agricultural income-tax or of a refund payable under this Act, fractions of an anna less than six pies shall be disregarded and fractions of an anna equal to or exceeding six pies shall be regarded as one anna.

Note:—This is analogous to Section 36 of the Income-Tax Act

28. Power to take evidence on oath.—(1) The assessing, appellate and revisional authorities shall, for the purposes of this chapter, have the same powers as are vested in a court under the Code of Civil Procedure, 1908, when trying a suit in respect of the following matters, namely :

- (a) enforcing the attendance of any person and examining him on oath or affirmation ;
- (b) compelling the production of any document ; and
- (c) issuing commission for the examination of any witness ;

and any such proceeding before such authority under this chapter shall be deemed to be a “judicial proceeding” within the meaning of Sections 193 and 228 and for the purposes of Section 196 of the Indian Penal Code.

(2) If any person, for the purpose of calculation of his agricultural income mentioned in clause (a) of sub-section (1) of Section 2, produces before any authority under this Act any rent-roll or other similar papers, showing the amount of rent received by him, he shall not be entitled to recover, or to institute a suit to recover, rent due to him on any tenure or holding included in such return at a rate higher than the rate mentioned in such return as payable for such tenure or holding unless the rent shown in such return has, since the date of the return, been lawfully enhanced.

(3) Any person who produced a rent-roll referred to in sub-section (2) may, within one year of producing such roll, apply to the assessing authority to make any correction therein, and the assessing authority may, if he is satisfied that such correction should be made, pass order for correcting such rent-roll.

(4) When the assessing authority passes any order under sub-section (3) he may assess, under Section 26, any income escaping assessment by reason of the original incorrectness of any entry corrected.

Note:—This is analogous to Section 37 of the Income-Tax Act.

29. Power to call for information.—The assessing authority may, for the purpose of this Act,—

(1) require any firm, or Hindu undivided family to furnish him a return of the names and addresses of the members of the firm or the *karta* and the members of the family, as the case may be, and

(2) require any person whom he has reason to believe to be the trustee, guardian or agent to furnish him a return of the names and addresses of the persons for or of whom he is trustee or guardian or agent.

CHAPTER V

Recovery of Tax and Penalty

30. Tax how payable.—(1) The amount specified in any notice of demand under Section 20 or in any order communicated under Section 23 shall be payable in [two]²⁵ equal instalments.

(2) The first instalment shall be paid within one month of the service of the notice of demand or communication of the order, as the case may be, and [second instalment within six months from the due date of the first instalment.]²⁶

(3) If any instalment is not paid within the time allowed under sub-section (2) the assessee shall be in default :

Provided that when an assessee has presented an appeal under Section 21 the appellate authority, on application, may, on such terms and conditions as he may specify, direct that the assessee shall be treated as not being in default.

Note:—This is analogous to Section 45 of the Income-tax Act.

31. Penalty for default.—(1) When an assessee is in default in making a payment of agricultural income-tax, the assessing authority may, in his discretion, direct that, in addition to the amount of the arrears, a sum not exceeding one-quarter of that amount shall be recovered from the assessee by way of penalty.

(2) For the purposes of sub-section (1), the Collector may direct the recovery of any sum less than one-quarter of the amount of the arrears and may enhance the sum so directed to be recovered from time to time in the case of a continuing default so however that the total sum so directed to be recovered shall not exceed one-quarter of the amount of the arrears payable.

32. Recovery of penalties.—(1) The Collector may, on the motion of the assessing authority, recover any sum imposed by way of penalty under the provisions of Section 17 or Section 31, or, where an assessee is in default, the amount assessed as agricultural income-tax, as if it were an arrear of land revenue.

(2) No proceedings for the recovery of any sum payable under this Act shall be commenced after the expiration of one year from the date on which the last instalment fixed under Section 30 falls due or after the expiration of one year from the date on which any appeal relating to such sum has been disposed of.

33. Right, title and interest of a member of Hindu undivided family or of other persons on whose behalf property is held, to pass to the purchaser when property is sold for realization of arrears of tax.—Notwithstanding anything contained in any other enactment for the time being in force :

25. Substituted for the word "four" by Section 13 of U. P. Act XIV of 1953 and the amendment came into force with effect from July 1, 1953 by Section 1 (2) of *vid.*

26. Substituted for the words "each subsequent instalment within two months of the previous instalment" by Section 13 of U. P. Act XIV of 1953 and the amendments came into force with effect from July 1, 1953.

- (a) Where any property of a Hindu undivided family is sold under this Act for realization of any amount due under this Act, the right, title and interest of all members of such family in the property shall pass to the purchaser;
- (b) where any person has been assessed to agricultural income-tax on the agricultural income derived from land held by him wholly or partly for the benefit of other persons and he is in default in respect of Government tax, the land so held by him may be attached and sold for the realization of such tax, and on such sale, the right, title and interest of such person in the said land shall pass to the purchaser.

CHAPTER VI

Offences and Penalties

34. False verification.—If any person makes a statement in a verification mentioned in Section 15 or Section 21 which is false, and which he either knows or believes to be false, or does not believe to be true, he shall be deemed to have committed the offence described in Section 177 of the Indian Penal Code.

35. Prosecution at the instance of Collector.—(1) A person shall not be proceeded against for an offence under Section 34 except at the instance of the Collector.

(2) Before instituting proceedings against any person under sub-section (1) the Collector shall call upon such person to show cause why proceedings should not be instituted against him.

(3) The Collector may compound any such offence.

36. Disclosure of information by public servant.—(1) All particulars contained in any statement made, return furnished or accounts or documents produced under the provisions of this Act, or in any evidence given or affidavit or deposition made in the course of any proceedings under this Act, or in any record of any assessment proceedings; or any proceeding relating to the recovery of a demand, prepared for the purposes of this Act, shall be treated as confidential, and notwithstanding anything contained in the Indian Evidence Act, 1872, no court shall, save as provided in this Act, be entitled to require any public servant to produce before it any such return, accounts, documents or record or any part of any such record, or to give evidence before it in respect thereof.

(2) If a public servant discloses any particulars contained in any such statement, return, accounts, documents, evidence, affidavit, deposition or record, he shall be punishable with imprisonment of either description which may extend to six months, and shall also be liable to fine not exceeding rupees one thousand:

Provided that nothing in this section shall apply to the disclosure—

- (a) of any such particulars for the purposes of a prosecution under the Indian Penal Code in respect of any such statement, return, accounts, documents, evidence, affi-

davit or deposition, or for the purposes of a prosecution under this Act, or

- (b) of any such particulars to any person acting in the execution of this Act where it is necessary to disclose the same to him for the purposes of this Act, or
- (c) of any such particulars occasioned by the lawful employment, under this Act, of any process for the service of any notice or the recovery of any demand, or
- (d) of any such particulars occasioned by the lawful exercise by a public servant of his powers under the Indian Stamp Act, 1899, to impound an insufficiently stamped document, or
- (e) of any rent-roll or similar papers produced by any assessee as the basis of his agricultural income or any part of such income ; or
- (f) of such facts to an officer of a Central Government, as may be necessary for the purpose of enabling that Government to levy or realise any tax imposed by it on incomes]²⁷ :

Provided, further, that no prosecution shall be instituted under this section except with the previous sanction of the Revision Board.

37. Failure to furnish return or to supply information.—If any person fails, without reasonable cause or excuse to furnish in due time any of the returns mentioned in Section 15 or Section 29 [the assessing authority may in his discretion direct that a sum not exceeding Rs. 5 for every day during which default continues shall be realised by way of penalty from the assessee]²⁸ :

[Provided that no such order shall be made, by the assessing authority unless the assessee has been heard or has been given a reasonable opportunity of being heard :

Provided further, that no prosecution shall be instituted against the assessee for failure to furnish the returns where a penalty has been imposed under this section]²⁹.

38. Bar of suit in civil courts.—No suit shall be brought in any civil court to set aside or modify assessment made under this Act, and no prosecution, suit or other proceeding shall lie against any officer or the Provincial Government for anything in good faith done or intended to be done under this Act.

CHAPTER VII

Miscellaneous

39. Computation of periods of limitation.—In computing the period of limitation prescribed for any appeal under this Act, the day on which the order complained of was made and the time requisite for obtaining a copy of such order shall be excluded.

- 27. Inserted by Section 14 of U. P. Act XIV of 1953.
- 28. Substituted for the words "he shall be punishable with fine which may extend to five rupees

for every day during which the default continues" by Section 15 of U. P. Act XIV of 1953.

- 29. Inserted by Section 15 of U. P. Act XIV of 1953.

40. Appearance by authorized representative.—Any assessee, who is entitled or required to attend before any income-tax authority in connexion with any proceedings under this Act, may attend either in person or by any person authorized by him in writing in this behalf.

41. Service of notices.—(1) A notice or requisition under this Act may be served on the person therein named either by post or as if it were a summons issued by a court under the Code of Civil Procedure, 1908.

(2) Any such notice or requisition may, in the case of a firm or a Hindu undivided family, be served on any member of the firm or on the *karta* or any adult male member of the family and, in the case of any other association of individuals, be served on the principal officer thereof; and any such notice or requisition so served shall be deemed to be a notice or requisition served on the firm, family, or association of individuals, as the case may be.

42. Receipts to be given.—A receipt shall be given for any money paid or recovered under this Act.

43. Indemnity.—(1) Notwithstanding anything contained in any other law or document for the time being in force, where any assessee has paid tax on any amount payable by him as maintenance or *guzara* to any other person, which he is, by law, decree of a court, agreement, contract, or other disposition of property, bound to pay to such person from his agricultural income, he may deduct such amount of tax from the amount payable to such person.

(2) Every person deducting, retaining or paying any tax in pursuance of this Act in respect of income belonging to another person, is hereby indemnified for the deduction, retention or payment thereof.

44. Power to make rules.—(1) The Provincial Government may make rules for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may—

- (a) provide, subject to conditions, for exemption from agricultural income-tax of income mentioned in sub-clauses (ii) and (iii) of clause (b) of sub-section (1) of Section 2;
- (b) provide, subject to conditions, for exemption from or reduce the rate of agricultural income-tax payable by a co-operative society;
- (c) prescribe, in the case of any society, trust or other association of individuals, an amount higher than Rs. 1,500 on which agricultural income-tax shall not be payable or a higher figure of total agricultural income for determining liability to pay tax under Section 4;
- (d) prescribe, for specified areas, a higher limit for the area of land which may be cultivated by a person exempt from payment of tax under the first proviso to Section 4;
- (e) prescribe the calamities for which, the manner in which and the principles according to which, deductions may be allowed under sub-section (2) of Section 6;
- (f) prescribe the period not being less than thirty days within which returns shall be submitted under sub-sections (1),

- (2) or (3) of Section 15, the form of such returns and the manner in which they shall be verified;
- (g) prescribe the form of the notice of demand mentioned in Section 20;
- (h) prescribe the manner in which and the period, not being less than thirty days within which appeal under Section 21 shall be filed and the manner in which the Memorandum of appeal shall be verified;
- (i) prescribe the fee mentioned in sub-section (2) of Section 24;
- (j) prescribe the form of the notice of demand mentioned in sub-section (3) of Section 26;
- (k) prescribe the method by which the assessment of agricultural income as determined under Section 5 or Section 6 shall be made in the case of an assessee who does not reside in the United Provinces, or of an assessee who resides in the United Provinces and is temporarily absent therefrom;
- (l) prescribe the manner in which the tax payable by an assessee, who has died after the date of the assessment made on him, shall be payable;
- (m) prescribe the manner in which the tax assessed on a Hindu undivided family shall be payable on partition of the property of such family.
- (n) prescribe the circumstances under which and the manner in which refunds of the tax paid under this Act shall be made;
- (o) prescribe the authority by whom and the place at which assessment shall be made in the case of assessee having agricultural income in the jurisdiction of more than one assessing authority;
- (p) provide for any other matter which by this Act may be prescribed.

(3) All rules made under this section shall be laid for not less than seven days before the Provincial Legislature as soon possible after they are made and shall be subject to such modification as the Legislature may make during the session in which they are so laid.

SCHEDULE³⁰

(See Section 3)

Rates of Agricultural Income-tax

PART I

<i>Part I</i>	<i>Rate</i>
1. On the first Rs. 1,500 of total agricultural income.	Nil.
2. On the next Rs. 3,500 of total agricultural income.	1 anna in the rupee.
3. On the next Rs. 10,000 of total agricultural income.	2 annas in the rupee.

The Part I of the Schedule has been substituted and Part II omitted by U. P. Act XVIII of

1954. The amendments so made shall have effect from 1st July, 1954, vide Section 1 (2) of *ibid.*

4. On the next Rs. 10,000 of total agricultural income. 4 annas in the rupee.
5. On the next Rs. 10,000 of total agricultural income. 8 annas in the rupee.
6. - On the balance of the total agricultural income. 10 annas in the rupee.

These rates are subject to the conditions that :

- (a) No Agricultural Income-tax shall be payable on a total agricultural income which does not exceed Rs. 4,200, and
- (b) in the case of assessees with income up to Rs. 5,000 the Agricultural Income-tax payables shall not exceed half the amount by which the total agricultural income exceeds Rs. 4,200.]²⁴

PART II

(Omitted)

U. P AGRICULTURAL INCOME-TAX RULES, 1949

Notification No. 374/I-C, dated February 18, 1949

In exercise of the powers conferred by Section 44 of the United Provinces Agricultural Income-tax Act, 1948 (U.P. Act III of 1949), the Governor of the United Provinces is pleased to make the following rules namely :

CHAPTER I

General

1. *Short title, extent and commencement.*—(a) These rules may be called the United Provinces Agricultural Income-tax Rules, 1949.

(b) They shall apply to the whole of the United Provinces and shall come into force at once.

2. *Definitions.*—In these rules unless there is anything repugnant in the subject or context,—

(a) “Act” means the United Provinces Agricultural Income-tax Act, 1948 (U.P. Act III of 1949).

(b) “Section” means section of the Act.

(c) “Registered refugees” mean refugees registered in accordance with Section 4 of the United Provinces Refugees Registration and Movement Act, 1947 (U.P. Act VII of 1948).

CHAPTER II

Determination of Agricultural Income

3. Where the members of a co-operative society are registered refugees, the rate of agricultural income-tax payable by such society shall be reduced by 25 per cent.

4. [Deleted.]

5. An assessee shall, along with his return of income, file a declaration in Form A.I.T.-2 indicating his option under sub-section (1) of Section 6.

6. [Deleted.]

7. [Deleted.]

8. Where an assessee has under rule 5 elected the method of computation provided in clause (a) of sub-section (2) of Section 6, his agricultural income shall be computed in accordance with rules 9 to 12.

9. For purposes of clause (a) of sub-section (2) of Section 6, the rent-rates applicable to hereditary tenants shall be the rent-rates as determined under Sections 103 to 106 of the United Provinces Tenancy Act, 1939 (U.P. Act XVIII of 1939).

Note—Section 103 to 106 of the United Provinces Tenancy Act, 1939, are reproduced in Appendix II.

10. For the purposes of Computing the agricultural income of an assessee to whom clause (a) of sub-section (2) of Section 6 applies, the assessee shall enter in form Annexure C to Form A.I.T.-3, the land from which such income is derived villagewise, and

- (i) Where the assessee is himself cultivating the land the rent of such land shall be determined by multiplying the total area of each class of soil with the rent-rate applicable to hereditary tenants of such land.
- (ii) Where the assessee is a receiver of rent-in-kind, the rent thereof shall be an amount which bears the same proportion to the total rent fixed in accordance with clause (1) as the rent-in-kind bears to the total produce.

10-A. Computation of income from tea.—In the case of a person who grows tea for the purpose of manufacture and sale, 60 per centum of the income derived from the business as computed by an Income-tax Officer under rule 24 of the Indian Income-tax Rules, 1922, after making such deduction under Section 6 (2) (b) of the Agricultural Income-tax Act as were not made by the said Income-tax Officer, shall be deemed to be the net agricultural income assessable to agricultural income-tax :

Provided that if the income deemed to be derived from the business in accordance with rule 24 of the Indian Income-tax Rules, 1922, has not been determined before the filing of returns under Section 15, the assessee shall submit a statement of profit and loss in respect of his entire income derived partly from agriculture and partly from business :

Explanation.—For the purposes of the proviso to this rule the gross agricultural income of an assessee shall be deemed to be 60 per centum of his total income.

Provided further that where an assessee produces returns accepted by the Income-tax Officer in relation to the tea industry, the assessing authority will give them due weight and use them as a guide without being necessarily bound by them.

10-B. For the purposes of the proviso to clause (a) of sub-section (2) of Section 6 of the Act, the Land Reforms Commissioner may, for the calculation of agricultural income from land newly brought under cultivation, fix multiples lower than $12\frac{1}{2}$ for a specified number of years taking into consideration the quality of such land.

11. For allowing deductions in respect of agricultural calamity affecting the land from which the agricultural income mentioned in sub-section (1) of Section 6 is derived or the produce thereof the rent determined under the last preceding rule shall be reduced in accordance with the following principles :

(a) If the calamity is one which has caused more or less permanent deterioration of the soil the rent determined under rule 10 shall be reduced in the same proportion in which the rent of the plot so affected has been or would have been reduced as consequence of reduction in revenue under rule 164, Revenue Manual.

(b) In the case of an agricultural calamity which has not affected the fertility of the soil and yet has affected crops of a particular harvest, the loss in crops shall be estimated in terms of 16 annas in accordance with Appendix I. Where the agricultural calamity was inquired into by the revenue officer concerned any estimate of loss reported by such officers shall be presumed to be correct and the total rent shall be reduced proportionately to the loss reported or proved.

12. The agricultural income of an assessee shall be determined by multiplying rent determined under rules 10 and 11 by the multiple for the area concerned as fixed by the [Land Reforms Commissioner].

Note—Multiples fixed by Land Reforms Commissioner are contained in notification no. 449/A. I. T., dated June 4, 1953 of which a copy is attached to these rules for ready reference. For subsequent changes in the multiples notifications issued by the Land Reforms Commissioner from time to time may be consulted.

13. For purposes of allowing deductions under sub-clause (iv) of clause (b) of sub-section (2) of Section 6, all amounts actually paid by the assessee on account of the following operations shall be taken into account :

(a) Ploughing and hoeing.

(b) Sowing including cost of seed (in case of seed not actually purchased its price according to the prevailing rate in the nearest market at the time of sowing).

(c) Weeding.

(d) Watering and irrigation.

(e) Harvesting and threshing of crops.

(f) Making it otherwise fit for market.

(g) Transporting the crop to market if deductions are not claimed under clause (h).

(h) Maintenance of animals maintained solely for carrying on agriculture or marketing of the agricultural produce, limited to the actual cost of essential requirement other

than the fodder and *bhusa* produced from the assessee's own land.

- (i) Maintenance of agricultural implements.
- (j) Manuring including the cost of manure actually purchased.
- (k) Watching of crops.
- (l) Temporary fencing not of the nature of fencing for which depreciation value is deducted under item No (4) of the Schedule.
- (m) Customary annuities paid in cash or kind to artisans and other persons whose services are ordinarily required in connexion with cultivation :

Provided that nothing in this rule shall be deemed to authorize deductions in respect of expenses for which deductions have already been allowed to the assessee under any other rule or any payment of religious or charitable nature.

13-A. Further deductions permitted under Section 6-A shall be allowed on account of—

- (a) Cost incurred over the maintenance of trees in the previous year in respect of the following :—
 - (i) Watering and irrigation of trees.
 - (ii) Watching of trees or timber.
 - (iii) Making it fit for market,
 - (iv) Transporting the timber to the market ; and
- (b) the capital cost involved. For the purpose of calculating the net agricultural income, 20 per cent. of the price of the timber shall be deducted on account of the capital cost :

Provided that nothing in this rule shall be deemed to authorize deductions in respect of expenses for which deductions have already been allowed to the assessee under any other rule or for any payment of religious or charitable nature.

14. Under sub-clause (xiii) of clause (b) of sub-section (2) of section 6 deductions shall be allowed to the extent of depreciation in value of the capital asset calculated on the prime costs of each asset according to the percentage (rates) mentioned in the Schedule.

The assessees shall furnish details of calculations in Form A. I. T.-3 (Annexure E) to the return.

15. In determining the amount of produce and the market value thereof under sub-section (3) of Section 6 the assessing authority may take into consideration :

- (i) the account books, if any, kept by the assessee in the regular course of business ;
- (ii) the average yield for the crop reported in neighbouring areas, having regard to the class of soil and situation thereof ;
- (iii) the average prices during the year for such produce in the nearest market.

16. If the assessing authority thinks that assessment under the Act in the case of any society, trust or other association of individuals will be attended with undue hardship and is of the opinion that in the case of agricultural income of such society, trust or association no tax should be payable on an amount higher than Rs. 1,500 or that higher figure of total agricultural income should be fixed for determining the liability to pay tax under Section 4, it shall report through Collector (unless the Collector himself is the assessing authority) full particulars thereof to the Land Reforms Commissioner giving reasons for the recommendation. The Land Reforms Commissioner after scrutinizing such report shall make his recommendation to the Provincial Government for orders. The Provincial Government may, after considering the recommendation of the Land Reforms Commissioner, pass such orders as it may consider proper.

17. Sums paid by an assessee as donations to any institution or fund, which is established in the United Provinces for a charitable purpose and is approved by the Provincial Government for the purpose of the rule shall be exempt from liability to agricultural income-tax :

Provided that the total of the sums so paid is not less than Rs. 250 :

Provided further that nothing in this rule shall be deemed to entitle a person to claim any exemption in respect of any sum referred to in this rule if it was exempted from income-tax under the Income-tax Act, 1922.

Explanation—In this rule “charitable purpose” includes relief of the poor, education, medical relief and the advancement of any object of general public utility.

CHAPTER III

Assessment, Notices and Appeals

18. (1) (a) Subject to sub-section (2) of Section 14 an assessee shall ordinarily be assessed by the Assistant Collector in charge of the sub-division, or the Collector of the district in which he permanently resides. Where the question is raised as to the sub-division of the district in which the assessee so resides the Collector shall decide the same and the assessee shall be accordingly assessed. Similarly, where the question is raised as to the district in which the assessee so resides the Land Reforms Commissioner shall decide and the assessee shall be accordingly assessed.

(b) Where an assessee desires to be assessed in a sub-division or district other than the one in which he permanently resides, he shall apply for such permission :

(i) if the sub-division in which he resides and the sub-division in which he desires to be assessed, are in the same district, to the Collector of the district ;

(ii) in other cases to the Land Reforms Commissioner.

(c) The permission applied for under sub-rule (b) may be given if the authority to which the application is made considers that it will help in the convenient and speedy disposal of the assessment.

(2) Where an assessee permanently resides outside the United Provinces, his agricultural income shall be assessed in the district in which such income accrues or where such income accrues in more than one district of the Province in any such one of the districts as the Land Reforms Commissioner may direct.

19. Where an assessee does not reside in the United Provinces, or resides therein but is temporarily absent, his agricultural income as determined under Sections 5 to 7 shall be assessed after serving notices and requisitions under the Act on his Agent residing in the Province, and such service on the Agent shall be deemed to be a service upon him.

Explanation—Any person authorized to receive notices on his behalf by a person residing out of the United Provinces or temporarily absent therefrom or employed by, or on behalf of such a person for managing or looking after the property from which the agricultural income is derived, shall for the purposes of this rule be deemed to be the agent of such person.

20. The notice mentioned in sub-section (1) of Section 15, shall in addition to publication in the official *Gazette* be published by affixing copies thereof on the Notice Boards of the assessing officers, the local courts and the tahsils. Such notice shall be in Form A. I. T.-1 (a) and shall require every person whose total agricultural income exceeds the maximum which is not chargeable to agricultural income-tax to furnish a return of his total agricultural income in Form No A. I. T.-3 and verified in the manner indicated therein within such period not less than thirty days and not more than forty-five days of the publication of the notice in the *Gazette*, as may be specified.

21. The principal officer of every company shall on or before March 31, 1949 and September 30 in subsequent years furnish to the Collector a return in Form A. I. T.-3 and verified in the manner indicated therein.

22. The notice mentioned in sub-section (3) and the statement mentioned in sub-section (3-B) of Section 15 shall be in Form No. A. I. T.-1 (b) and A. I. T.-1 (c) respectively and the person on whom it is served shall furnish a return in Form A. I. T.-3 and verified in the manner indicated therein within such period not less than thirty days and not more than forty-five days of the delivery of notice as may be specified.

23. A notice or requisition required to be sent by post under Section 41 shall be sent by registered post with acknowledgement due and the postal receipt, received for the same shall be kept on the file of the case to which it relates.

24. A notice of demand mentioned in clause (iii) of sub-section (4) of Section 18 or Section 20 shall be served on the assessee in Form A. I. T.-4 and where the demand so made is subsequently enhanced under the provisions of Sections 21, 22, 25, or 26, a fresh notice of demand shall be served in Form A. I. T.-5.

25. (1) An appeal under Section 21 to the Commissioner or the Additional Commissioner may be filed within [thirty-five] days of the order appealed against and shall be in the case of :

- (a) an order under Section 16 in Form A. I. T.-6,
- (b) an order under Section 7 in Form A. I. T.-7, and
- (c) an order under Section 17 in Form A. I. T.-8 and the same shall be verified in the manner indicated therein.

(2) (i) The memorandum of appeal mentioned in sub-rule (1) may be presented to the Commissioner or the Additional Commissioner himself or to the Collector of the district where the appellant was assessed, for transmission to the Commissioner or the Additional Commissioner or sent to the Commissioner or the Additional Commissioner by registered post with acknowledgement due.

(ii) On receiving such memorandum of appeal the Collector shall endorse thereon the date of its presentation and the name of the party or his duly authorized agent in writing in that behalf presenting it and remit the appeal within a week of such presentation to the Commissioner or the Additional Commissioner.

25-A. The Government may appoint a special officer or pleader to represent the assessing authority before the Commissioner or the Additional Commissioner or the Revision Board.

25-B. (1) The assessing authority shall be subordinate to the Commissioner or the Additional Commissioner and the Revision Board in judicial matters pertaining to agricultural income-tax.

(2) Subject to the provisions of the Act and the revisional jurisdiction of the Revision Board the Commissioner or the Additional Commissioner shall be subordinate to the High Court.

25-C. The Commissioner or the Additional Commissioner and the Revision Board shall regulate the procedure of the case before them provided the same is not repugnant to the Act or the Rules and has been previously approved by the State Government.

25-D. (1) Petitions or applications under the Agricultural Income-tax Act to the assessing authority, the Commissioner or the Additional Commissioner and the Revision Board shall be chargeable with the same court-fee as is respectively chargeable for petitions and applications to the Collector, the Commissioner or the Additional Commissioner of a Division and the Board of Revenue.

(2) Copies of orders shall be chargeable according to the scale of fee prescribed for the Revenue Courts, i. e., Collector, Commissioner or the Additional Commissioner or the Revision Board.

25-E. Revision petitions shall be presented in the Agricultural Income-tax form appended to Agricultural Income-tax Rules, to the Collector of the district where the petitioner was assessed and the latter shall forward the same to the Revision Board for disposal.

25-F. The authority before whom the appeal or revision is pending shall fix the place and date for hearing and inform the assessee as well as the Land Reforms Commissioner of the same.

25-G. The Commissioner or the Additional Commissioner will send a copy of every appellate order passed by him, to the Land Reforms Commissioner within a week of the date on which it was passed.

25-H. The Revision Board will send a copy of every order passed by them in revision to the Land Reforms Commissioner within a week of the date on which it was passed.

26. An application for reference to the High Court under sub-section (2) of Section 24 shall be accompanied by a court-fee of where the agricultural income of the applicant as determined by the assessing authority :

	Rs.
(i) Does not exceed Rs. 15,000	.. .. 50
(ii) Exceeds Rs. 15,000 but does not exceed Rs. 50,000	.. 75
(iii) Exceeds Rs. 50,000	.. .. 100

27. Where an undivided Hindu family is partitioned subsequent to the assessment of agricultural income-tax on such family the agricultural income-tax so assessed may without prejudice to the joint liability of all the coparceners of such family for payment of the same, be realised from each coparcener in proportion to the share of the total income of the family allotted to him at the partition.

CHAPTER IV

Recovery of Taxes and Hand Penalties

28. (1) Every assessing authority shall maintain a register in Form A. I. T.-13 showing the demand of agricultural income-tax, the instalments, in which it is payable and the date by which each instalment is to be paid.

(2) Each instalment shall be paid by chalan in triplicate in form No. 43-A of the financial Handbook, Volume V, Part II, into the tahsil treasuries of the district. One part of the chalan shall be retained at the tahsil treasury, another part shall be returned to the assessee showing that the amount mentioned therein has been deposited and the third part shall be forwarded without delay to the assessing authority concerned. On receipt of a chalan from the Tahsildar under this sub-rule or under rule 31, the payment mentioned therein shall be recorded in the register referred to in sub-rule (1).

(3) Where any instalment is not paid by the date fixed therefor, the official concerned shall put up the register along with the relevant file for orders of the assessing authority regarding imposition or otherwise of a penalty under sub-section (i) of Section 31.

(4) Where an assessee is in default either of payment of instalments as mentioned in sub rule (3) or of any sum imposed by way of penalty under Sections 17 and 31, the assessing authority may move the Collector to recover the same as arrears of land revenue.

29. The Collector shall maintain a register in Form No. A. I. T-14 tahsilwise showing demand of agricultural income-tax determined under Sections 16, 18 and 25, or ordered under Sections 21 or 22, or modified under Section 26, and any penalty imposed under Section 17 or 31. The entries in such register shall be made on the basis of information received from the assessing authorities under the last preceding rule.

30. The Collector shall, as soon as may be, forward to the tahsildar concerned an extract of the relevant entry in his register mentioned in rule 29 for realizing the amount due as arrears of land revenue.

31. (a) Any person in default desiring to deposit agricultural income-tax shall at request be given a chalan in triplicate in Form No. 43-A (printed on page 750 of the Financial Handbook, Volume V, Part II) duly filled in by the official concerned and the defaulter shall present the same along with the amount to be deposited at the sub-treasury to the cashier. One part of this chalan, acknowledging the receipt of the money duly sealed and signed by the tahsildar shall be returned to the depositor as receipt under Section 42, the other part shall be retained at the sub-treasury and third shall be forwarded to the assessing authority.

(b) The amount received under sub-rule (a) shall be forthwith recorded by the clerk concerned in the appropriate column or columns of the register (in Form No. A. I. T.-15).

32. On the 1st and 16th of every month the tahsildar shall submit to the Collector a statement in Form No. A. I. T.-16, showing progress of collection.

CHAPTER V

Miscellaneous

33. If a share-holder in a company, the agricultural income of which has been assessed to agricultural income-tax, has received from such company any dividend and satisfied the assessing officer that the rate of the agricultural income-tax applicable to the agricultural income of the company in the previous year concerned was greater than the rate applicable to his total agricultural income assessable in that year, or that his total agricultural income in such year was below the minimum chargeable with the agricultural income-tax he shall, on production of the certificate received by him under the provisions of rule 36, be entitled to a refund on the amount of such dividend (including the amount of agricultural income-tax assessed thereon), if any, calculated at the difference between those rates or at the rate applicable to the agricultural income of the company, as the case may be :

Provided that no claim to any refund of agricultural income-tax under this rule shall be allowed unless it is made within one year from the last date of the financial year in which agricultural income-tax was recovered from the company concerned or before the last day of the financial year commencing after the expiry of the financial year in which the dividend was declared by the company, whichever period may expire later.

34. (1) If in any case not provided for by rule 33 the assessing officer is satisfied upon claim made in this behalf, that the agricultural income-tax has been paid by or on behalf of any person with which he was not properly chargeable or which was in excess of the amount with which he was properly chargeable, the assessing officer shall allow a refund of the amount so paid or so paid in excess to such person, or in the case of such person's death, to his executor, administrator or other legal representative.

(2) If the Commissioner or the Additional Commissioner in the exercise of his appellate powers, or the Revision Board in the exercise of their revisional powers or as a result of reference made to the High Court are satisfied to the like effect, he or they shall, in like manner, cause a refund to be made by the Collector concerned of any amount found to have been wrongly paid or paid in excess. In the case of refund as a result of a reference made to High Court the amount shall be refunded with interest calculated at 3 per cent. per annum from the date of payment to the date of refund.

(3) Nothing in this rule shall operate to validate any objection or appeal which is otherwise invalid or to authorise the revision of any assessment or other matter which has become final and conclusive, or the review by any officer of a decision of his own which is subject to appeal or revision, or where any relief is specifically provided elsewhere in the Act, to entitle any person to any relief other or greater than that relief :

Provided that no claim to any refund of agricultural income-tax under this rule shall be allowed unless it is made within one year from the last date of the financial year in which agricultural income-tax was recovered from the assessee concerned.

35. (a) Refund of an amount shall only be ordered when the assessing authority is fully satisfied that the amount was deposited and it shall be made through a refund voucher (No. 19, Financial Handbook, Volume V. Part I). A record of refund so ordered shall be maintained in Form No. A. I. T.-17.

(b) After an application for refund is made, the clerk maintaining the register under clause (a) above shall, within reference to the said register, report whether or not any refund has been already allowed in respect of the same claim. The assessing authority shall then dispose of the application on merits.

35-A. If the receiver of a maintenance or *guzara* who has suffered, under Section 43, a deduction from the amount payable to him by an assessee, satisfies the Assessing Officer that the rate of the agricultural income-tax applicable to the agricultural income of the assessee was greater than the rate which would have been applicable, if the receiver of the maintenance or *guzara* had been assessed separately on the amount of his maintenance or *guzara* and his other agricultural income, if any, or the amount of his maintenance or *guzara* and his other agricultural income, if any, was below the minimum chargeable with agricultural income-tax, he shall be entitled to a refund equal to the difference between the amount of deduction lawfully made under Section 43, and the amount of tax assessable on the amount of maintenance or *guzara* and his other agricultural income, if any :

Provided that no claim for refund under this rule shall be allowed unless the applicant was entitled to a maintenance or *guzara* under a decree of court operative at the commencement of the Act or under an agreement, contract or other disposition of property executed and registered before the date of the commencement of the Act :

Provided further that no claim to any refund of agricultural income-tax under this rule, shall be allowed unless it is made within one year

from the last date of the financial year in which the agricultural income-tax was recovered from the assessee concerned.

36. (1) The assessing authority after examining the accounts of a company earning wholly or partly agricultural income assessable to agricultural income-tax shall, on an application made in this behalf by the principal officer of such company after agricultural income-tax payable by the company has been fully paid, grant to the applicant a certificate in Form No. A. I. T.-9 declaring the percentage of the agricultural income of the company to its total income (agricultural as well as non-agricultural the latter as ascertained by the Income-tax Act, 1922).

(2) Every application for a certificate under this rule shall be accompanied by a certified copy of the final order assessing the company to income-tax under the Indian Income-tax Act, 1922.

(3) A properly authenticated copy of the certificate granted under this rule shall be furnished by the company to each of its share-holders in order to enable him to claim a refund under rule 35.

37. The assessing authority may, for the purposes of the Act, require—

- (i) a Firm to furnish him a return showing the names and addresses of its members in Form No. A. I. T.-10;
- (ii) Hindu undivided family to furnish him a return of the names and addresses of the Manager, *karta* or members of the family in Form No. A. I. T.-11.
- (iii) any person whom he has reason to believe to be Trustee, Guardian or Agent to furnish him a return of the names and addresses of the persons for, or of whom he is Trustee, Guardian or Agent in Form No. A. I. T.-12.

SCHEDULE

Depreciation value of capital assets

Serial number	Classification of capital assets	Rate, i.e. percentage of prime cost
1	Kachcha buildings	.. 12·5
2	Pakka buildings	.. 2·5
3	Kachcha and pakka mixed	.. 5·0
4	Fencing (barbed wire with iron posts)	.. 5·0
5	Pakka roads	.. 5·0
6	Kachcha roads	.. 15·0
7	Tanks	.. 5·0
8	Pakka wells	.. 2·5
9	Kachcha wells	.. 33·5
10	Tube-wells	.. 3·0
11	Irrigation channels (pakka)	.. 10·0
12	Irrigation channels (kachcha)	.. 20·0
13	Bullock-drawn wooden and leather implements	.. 25·0
14	Country carts	.. 15·0
15	Dunlop carts	.. 10·0
16	Small hand implements	.. 25·0

from the last date of the financial year in which the agricultural income-tax was recovered from the assessee concerned.

36. (1) The assessing authority after examining the accounts of a company earning wholly or partly agricultural income assessable to agricultural income-tax shall, on an application made in this behalf by the principal officer of such company after agricultural income-tax payable by the company has been fully paid, grant to the applicant a certificate in Form No. A. I. T.-9 declaring the percentage of the agricultural income of the company to its total income (agricultural as well as non-agricultural the latter as ascertained by the Income-tax Act, 1922).

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SCHEDULE

Depreciation value of capital assets

Serial number	Classification of capital assets	Rate, i.e. percentage of prime cost
1	Kachcha buildings	.. 12·5
2	Pakka buildings	.. 2·5
3	Kachcha and pakka mixed	.. 5·0
4	Fencing (barbed wire with iron posts)	.. 5·0
5	Pakka roads	.. 5·0
6	Kachcha roads	.. 15·0
7	Tanks	.. 5·0
8	Pakka wells	.. 2·5
9	Kachcha wells	.. 33·5
10	Tube-wells	.. 3·0
11	Irrigation channels (pakka)	.. 10·0
12	Irrigation channels (kachcha)	.. 20·0
13	Bullock-drawn wooden and leather implements	.. 25·0
14	Country carts	.. 15·0
15	Dunlop carts	.. 10·0
16	Small hand implements	.. 25·0

17	Bullock-drawn iron implements	..	10·0
18	Tractor and oil engines	..	12·0
19	Steam engines	..	5·0
20	Tractor implements	..	12·5
21	Workshop tools	..	10·0
22	Weighing machines	..	7·5
23	Fixed power machinery	..	12·5
24	Power pumping machinery	..	12·5
25	Indigenous sugarcane crushers (kolhus and belans)	..	18·0
26	Other machineries and implements	..	5·0
27	Live-stock for cultivation and transporting the crop to market	..	12·5

APPENDIX I

For estimating the extent of loss due to agricultural calamity mentioned in rule 11 such as drought, frost, rust, hail, floods, locusts, etc. the rules are contained in Chapter VI of the Revenue Manual for the guidance of the district staff. The procedure in those rules may, with advantage, be observed by the assessees. The following procedure on the same lines is, however laid down for estimating the loss and reporting figures affecting agricultural income :

(1) The extent of loss or damage caused to crops should be estimated in annas, taking 16 annas as the normal crop. It is possible that the loss or damage may not be uniform over all the fields of the assessee. It may be that the loss is uniform over the unirrigated fields and the loss in the irrigated fields, though not the same as over unirrigated ones, is also, uniform. In such cases separate estimates are necessary for irrigated and unirrigated fields as a whole. In some cases the loss varies with crop and so separate estimate is required for every crop. Then again it may be necessary to distinguish between irrigated and unirrigated fields of the same crop. In other cases such as hail or flood, a part only of a village may be damaged or different parts may be damaged to different extents. In such a case it will be necessary to take into consideration only the damaged portion or the portions damaged to varying extents and to estimate the damage done in such portion or in each of such portions.

(2) When loss has been estimated in annas for different kinds of areas classified under (1) above, the total area under each category should be multiplied by annas of loss and divided by 16 for each class of soil. This will give the loss of area for each such class. Such areas representing losses should be totalled. The aggregate loss will be in annas which bears the same proportion to 16 annas as the total of such areas bears to the total of the assessee's land. The land in this rule means the land referred to in Section 6 (1) and excludes the area which has remained unsown on account of any calamity.

Example.—The loss over different areas of each class of soil is as follows :

	<i>Loss in annas</i>	<i>Loss in area</i>
4 annas over 12 acres	... 12×4	
		= 3 acres.
	16 4×8	

8 annas over 4 acres	$\dots - - - = 2$ acres.
	16
12 annas over 12 acres	$12 \times 12 = 9$ acres.
Total .. 28	<u>14</u> acres.

The aggregate loss over assessee's entire land ... 8 annas.

(3) It is to be remembered that in most years the crop of a field suffers some slight loss or damage and it is in exceptional not normal years—that suffers no loss. So correctly speaking in estimating loss only that loss which is in excess of normal loss should be considered. It is also to be remembered that estimate of loss can only be approximate and so too meticulous calculations regarding estimate of loss need not be attempted.

APPENDIX II

103. In any district, part of a district or local area for which rent-rates have not been determined, the court shall decide any question relating to the commutation, determination, abatement or enhancement of rent after making a local inspection and considering the rent generally payable by tenants of the same class for land of the same class in the vicinity.

Rent-rates and appointment of Rent-rates Officer

104. In any district, part of a disuict, or local area for which rent-rates have been determined, the sanctioned rates for the purposes of this Act shall be (a) the rates determined at the latest settlement or the latest revision of settlement made under the Uttar Pradesh Land Revenue Act, 1901; or (b) the rates determined under the Agra Tenancy Act, 1926, or the Oudh Rent Act, 1889, as the case may be; or (c) the rates determined under the provisions of this Act, whichever are latest.

105. (1) If the rent-rates referred to in Section 105 do not distinguish between occupancy and non-occupancy or statutory tenants such rates shall be deemed to be sanctioned rates for both occupancy and hereditary tenants.

(2) If the rent-rates referred to in sub-section (1) distinguished between occupancy and non-occupancy or statutory tenants, the rates sanctioned for either non-occupancy or statutory tenants shall be deemed to be sanctioned rates for hereditary tenants.

106. Notwithstanding anything to the contrary in the Uttar Pradesh Land Revenue Act, 1901, the Provincial Government may, by notification in the Official Gazette, order that rent-rate shall be determined for any specified district or part of a district or local area whether by revision of the most recent rent-rates or otherwise, and may appoint an officer having powers not less than those of an Assistant Collector of the first class, hereinafter called a rent-rate officer, to propose rent-rates for occupancy and hereditary tenants in accordance with the provisions of this Act and with rules made by the Board.

Form No. A.I.T-1 (a)**NOTICE UNDER SECTION 15 (1) OF THE UTTAR PRADESH AGRICULTURAL INCOME-TAX ACT, 1948**

(For Assessee other than Companies)

Assessment year 19... ...19

1. In pursuance of the provisions of Section 15 (1) of the Uttar Pradesh Agricultural Income-tax Act, 1948, I, Collector of District, do hereby call upon every person, firm, undivided Hindu family, society, trust or association other than a Company as defined in the Indian Income-tax Act, 1922 (XI of 1922), whose agricultural income exceeds Rs. 4,200 to prepare a return and correct statement of his or its agricultural income during the previous year beginning from July 1,...and ending on June 30,...in Form No. A.I.T.-3 and to deliver the same, where the income exceeds one lakh, at my office otherwise at the office of the Sub-divisional Officer of the Sub-division in which such person, firm, undivided Hindu family, society, trust or association, as the case may be, resides or carries on business or is situate, duly signed and verified in the manner indicated in the said form by him or it within*.....days of the publication of this notice.

2. The income to be returned is the "total agricultural income" as defined in Section 2 (16) of the Uttar Pradesh Agricultural Income-tax Act, 1948.

3. The form contains instructions required for the preparation of the return. If any further information is desired, it can be obtained at the office of the Assessing Officer concerned.

4. If any claim for depreciation is to be made, necessary particulars in Form Annexure E to Form No. A.I.T.-3 should be furnished.

5. In accordance with the provisions of Section 29 of the Act a return should be furnished--

(a) in the case of a firm in Form No. A.I.T.-10 showing the names of the partners of the firm with their addresses;

(b) in the case of an undivided Hindu family in Form No. A.I.T.-11 showing the names of the Manager or *karta* along with the names of all adult male members of the family with their relationship and their addresses, or

(c) in Form No. A.I.T.-12 showing the names of any persons for or on behalf of whom you are a trustee, *mutawalli*, guardian, agent or representative, with their addresses.

6. This return should be accompanied by a declaration in Form No. A.I.T.-2 indicating the option as to the method of computation of your income under Section 6.

Seal

*Collector.....**District.....*

Note:--(1) The form specified above can be had from the office of the Assessing Officer concerned.

*(2) Here enter the number of days which should not be less than 30 days or more than 45 days.

Form No. A. I. T.-1 (b)**NOTICE UNDER SECTION 15 (3) OF THE UNITED PROVINCES AGRICULTURAL INCOME-TAX ACT, 1948**

(For Assessee other than Companies)

Assessment year 19.....19.....

1. In pursuance of the provisions of Section 15 (3) of the United Provinces Agricultural Income-tax Act, 1948, I, the Collector of District/Assistant Collector in charge of sub-division do hereby call upon you to prepare a return and correct statement of the agricultural income of yourself/firm/the family/the society/the trust/the association for the previous year beginning from July 1, and ending on June 30,; and deliver the same at my office at duly signed by you and verified in the manner indicated in the said form for yourself*/as the representative of the firm/the family/the society/the trust/the association, within† days of the receipt of this notice.

2. The income to be returned is the "total agricultural income" as defined in Section 2 (16) of the United Provinces Agricultural Income-tax Act, 1948

3. The form contains instructions required for the preparation of the return. If you desire any further information you can obtain it at my office.

4. If you wish to make any claim for depreciation you should furnish necessary particulars in the prescribed form Annexure E to Form No. A. I. T.-3.

5. In accordance with the provisions of Section 29 of the Act you are required to furnish me with a return---

*in Form No. A. I. T.-10 showing the name of the partners in your firm with their addresses,

*in Form No. A. I. T.-11 showing the name of the Manager or *karta* along with the names of all other male members of the family with their relationship and their addresses,

*in Form No. A. I. T.-12 showing the names of any persons for or on behalf of whom you are the trustee/*motawalli*/guardian/agent/representative, with their addresses.

6. This return should be accompanied by a declaration in Form No. A. I. T.-2 indicating your option as to the method of computation of your income under Section 6.

Seal.

*Collector**Sub-Divisional Officer.**District**Sub-division.*

*Before issue of notice strike off words and clauses which do not apply.

Note:—(1) A separate form preparing this return is annexed.

† (2) Here enter the number of days which should not be less than 30 days or more than 45 days.

Note:—Strike off 6 (2) (a) or 6 (1) (b) as the case may be.

Form No. A. I. T.-1 (c)

Statement of Agricultural Income under Section 15 (3-b) of the U. P. Agricultural Income tax Act, 1948.

Name of Assessee—**Sri** s/o I/o Tahsil Fasli.

It appears that the following income was derived by you during

Note:—(1) For calculating amount of loss in Col. 10 instruction in Appendix I at the end of the Agricultural Income-tax Rules should be followed.
(2) Details of the land newly brought under cultivation, land covered by groves and orchards and other cultivated land should be given in separate lines in Cols. 8 to 12 for each village.
(3) Grand totals for Cols. 2 to 15 shall be struck at the end of the statement.
(4) The Tax on the total estimated income amounting to rupees (in words and figures:.....) works out to be rupees (in words and figures:.....).

21

Dots

Form No. A. I. T.-2**FORM OF DECLARATION OF THE OPTION FOR COMPUTATION OF INCOME UNDER SECTION 6**

In pursuance of Section 6 (1), I,.....do hereby declare that I have elected the method of computation of agricultural income provided by Section 6 (2) (a)/(6) (2) (b) and have computed my income accordingly.

Signature.....

Designation.....

Address.....

Date.

Form No. A. I. T.-3

*Form of Return of Total Agricultural Income to be filed under Section 15
of the Agricultural Income-tax Act, 1948, by individual, Hindu
Undivided Families, Companies, Firms, Trusts, Societies
and other Associations of individuals.*

Assessment year 19.....

Previous year July, 1, 19....to June 30, 19.....

Name of Assessee.....

Designation/Status.....

Address.....

	Source of income	Amount of income	Remarks
1. Rent of revenue derived from land mentioned in Section 5 as detailed below—			
(a) The rent of revenue received in the previous years as per Annexure A to this return.			
(b) Deductions mentioned in clauses (a) to (f) of Section 5 as per Annexure B to this return.			
(c) Net income (a) minus (b)			
2. Income mentioned in Section 6 as detailed below—			
(a) Total amount of income under Section 6 (2) (a) as per Annexure C.			
Or			
(a) Total income from gross proceeds of sale of the produce of the land under Section 6 (2) (b) as per Annexure D.			
(b) Amount of deductions as per Annexure F			
(c) Net income (a) minus (b)			
3. Income from buildings referred to in clause (c) of subsection (1) of Section 2 as per Annexure G.			
4. Income received under proviso to clause VI of Section 6 (2) (b).			
5. Income derived from sources mentioned in clauses (a) to (c) of Section 12, i. e., divided from Companies shares in the agricultural income of any firm or association of individuals, property held under common management or receivership, etc. or property under the Court of Wards, Official Trustee or Administrator.			
6. Total income, i. e., totals of columns 1 (c), 2 (a)/2 (c), 3, 4 and 5.			

Source of income	Amount of income	Remarks
Exemptions claimed on account of—		
(a) Amount of income on which the income-tax has been deducted at the source as indicated in clauses (a) to (c) of Section 12.		
(b) Expenditure incurred on payment of insurance premia on the life of the assessee or his/her wife/husband and dependent son subject to a limit of 1/6th of the total agricultural income or Rs. 6,000 whichever is less. <i>vide</i> Section 12 (d).		
(c) Contribution in respect of a contract for deferred annuity.		
(d) Income exempt from liability of agricultural income-tax under Section 8 or 9.		

Total amount of exemption (a)+(b)+(c)+(d).

I declare that to the best of my knowledge and belief the information given in the statement is correct and complete, that the amounts of income shown are truly stated and relate to the previous year ending on June 30, 19.....that no other agricultural income was received by

me	and that	1
the family		the family
the company		the company
the firm		the firm
the trust		the trust
the society		the society
the association		the association

said year no other source of agricultural income.

Date.....

Signature.....

- Notes :—*
- (a) All agricultural income derived from any land in the United Provinces by a person, who does not reside in the Province or resides in it but is temporarily absent therefrom, is liable to be assessed to agricultural income-tax and must, therefore, be entered in this form.
 - (b) If agricultural income is received by any person in more than one capacity, separate return must be submitted for income received in each capacity.
 - (c) No deduction can be claimed in regard to any sum in respect of which exemptions under the Indian Income tax Act have already been allowed.
 - (d) No deduction shall be claimed for one and the same item under more than one head.

Annexeure A to Form No. A. I. T.-3

Details of income mentioned in Section 5 of assessee Sri....., son of....., caste....., resident of....., pargana....., tahsil....., district.....in.....Fasli.....

Name of pargane, tahsi and district	Sl. no.	Name of village with nahal	Local rates and rent	Mal- kana cesses	Local rates and cesses	Cash rent	Mali- kana	Total collected during the previous year out of the amount shown in cl. 4 for—		Other income mentioned in Section 5—	
								5(b)	5(c)	5(d)	5(e)
1	2	3	4 (a)	4 (b)	4 (c)	4 (d)	4 (e)	5 (a)	5 (b)	5 (c)	5 (d)

Annexure B to Form No. A. I. T.-3

Details of deductions mentioned in Section 5 from the income of Sri.....
 son of....., caste....., resident of....., pargana....., tahsil.....,
 district....., in....., Fasli.

Expenses actually incurred in the previous year (in connection with the land from which agricultural income is derived) on account of—

Serial no.	Land revenue	Local rates and cesses	Taxes paid to local authorities	Total	In kind (estimated value)	Local rents and cesses	Total	Rents, etc., including malkana	Collection charges on the total income mentioned in col. 10 of Annexure A calculated according to Section 5 (b)	Income mentioned in col. 10 of Annexure A calculated from which agricultural income is derived	Construction, etc.	Expenditure incurred	Date of mortgage or charge or other work capital charged	Property affected	Amount involved	Irrigation, productive or protective work capital charged	Interest paid	Interest and other expenses	Remarks		
1	2	3 (a)	3 (b)	3 (c)	3 (d)	4 (a) 4 (b) 4 (c) 4 (d)	5	6	7	8 (a), 8 (b), 8 (c)	9 (b), 9 (c), 9 (d)	10	11								

- (i) Construction
- (ii) Maintenance
- (iii) Repairs

Annexure C to Form No. A. I. T.-3

Details of calculation of agricultural income under Section 6 (2) (a) of assessee Sri , son of , caste , resident of , pargana , tahsil , district , in , Faish.

Name of village with name of mahal	Class of soil	Total area of each class	Valuation [col. 2 (b) \times col. 3]	Loss sustained by crops in terms of rule 9 /16/-	Amount of loss ("col. 4 \times col. 5)	Net valuation (col. 1 minus col. 6)	Agricultural income (column 7) x the multiples fixed in respect of land newly brought under cultivation, land covered by groves and orchards and other cultivated land	Remarks	
1	2(a)	2(b)	3	4	5	6	7	8	9

- (1) Land covered by a grove or an orchard will be deemed to be land cultivated for the purposes of annexure.
 (2) Where an assessee derives income from land newly brought under cultivation, land covered by groves or orchards and other cultivated land, details of each shall be given in separate lines in column 2 (b) to column 8 against each class of soil and the fact whether the area is newly cultivated or is covered by a grove or an orchard or is other cultivated land shall be entered in the remarks column.

Annexure D to Form No. A. I. T.-3

Income from Land mentioned in Section 6 (2) (b) of assessee Sri
son of , resident of , pargana , tahsil , district
in Fasli.

Annexure E to Form No. A. I. T.-3

*Statement of particulars of assets in respect of which depreciation value
is claimed under rule 14*

Serial No.	Description of build- ings, plants, wells, machinery and other capital assets	Year of construction or purchase	Prime cost	Prescribed rate in Schedule	Actual amount of depreciation allowable	Remarks
1	2	3	4	5	6	7

Annexure F to Form No. A. I. T.-3

Account of deductions permissible under Section 6 (2) (b) in respect of -

Sri....., son of, caste.....,
resident of, pargana, tahsil,
..... district.....

Serial No.	Name of item	Amount of deduction	Remarks
1	Amount paid on account of land revenue, local rates and cesses by the assessee. (Mahalwise details to be noted in column of remarks.)		
2	Amount paid as taxes paid to local authorities in respect of land from which agricultural income is derived.		
3	Rent including cesses paid in the previous year in respect of land from which agricultural income is derived (Mahalwise details to be noted in the column of remarks.)		
4	Sums paid in the previous year in respect of land from which agricultural income is derived in accordance with the provisions of the Northern India Canal and Drainage Act.		
5	Expenses including the cost of maintenance or hire of agricultural implements and cattle incurred in the previous year— (a) in raising the crops or obtaining timber from which the agricultural income is derived (b) in making it fit for market, and (c) in transporting it to market		
6	Expenses incurred in the previous year on irrigation, productive or protective works constructed for the benefit of the land from which agricultural income is derived. (A) Construction . . . Nature or situation of works together with amount spent { 1. 2. 3. (B) Maintenance . . . Nature or situation of works together with amount spent. { 1. 2. 3.		
	Total		

Serial No.	Name of item	Amount of deduction	Remarks
7	Sum paid in the previous year in order to effect the insurance against loss or damage of crops or property from which agricultural income is derived.	:	:
8	(Nature of the capital asset with details to be given in the column of remarks.)	:	:
9	Cost incurred in the previous year on replacement or on repairs in respect of any capital asset which was purchased or constructed not earlier than two years before the commencement of this Act, for the benefit of the land from which the agricultural income is derived.	:	:
10	(Details to be given in the column of remarks.)	:	:
11	Interest paid in the previous year on any amount borrowed and actually spent on any capital expenditure incurred not earlier than two years before the commencement of this Act, for the benefit of the land from which the agricultural income is derived.	:	:
12	(Details to be given in the column of remarks.)	:	:
13	Interest paid in the previous year in respect of loans taken under the Land Improvement Loans Act, 1883, or the Agriculturists' Loans Act, 1884.	:	:
14	(Details to be given in the column of remarks.)	:	:
15	Depreciation value of capital assets. (column 6 of Annexure E.)	:	:
	Total deductions (total of columns 1 to 14)	...	...

Annexure G to Form No A. I. T.-3

Form showing accounts of income under Section 2 (1) (c)

1. Description of the buildings.
2. Income derived from the buildings. 107427
3. Expenses incurred on repairs and maintenance.
4. Assessable income (column No. 2 minus column No. 3).
5. Remarks.

Form No. A. I. T.-4

Notice under Section 18/20 of the United Provinces Agricultural Income-tax Act, 1948

1. You (name).....
occupation..... address.....
..... have been assessed for year 19..... to
agricultural income-tax, amounting to Rs.....
(in addition to a penalty of Rs.....)

2. You are required to deposit the total amount of Rs
in the following two instalments:—

(a) first instalment of Rs..... on.....

(b) second instalment of Rs..... on.....
at the treasury or sub-treasury of the district, where a receipt shall be
given to you.

3. If the instalment specified in paragraph 2 above is not paid by
the date noted against it you will be liable to such penalty as the assessing
authority may direct under Section 31 of the Agricultural Income-
tax Act, 1948.

Agricultural Income-tax Officer,

Dated..... 19

(Place).....

Form No. A. I. T.-5

*Notice of Enhancement of demand of Agricultural Income-tax under
Section 21/22/25/26 (1)*

1. You (name).....
occupation..... address.....
..... have been assessed for the year 19..... to
19..... to agricultural income-tax amounting to Rs.....
(in addition to a penalty of Rs.....) as shown in the notice
of demand already served on you under Section 18(2) of the Agricultural
Income-tax Act. Since then the amount assessed has been revised
by the assessing authority
by the Commissioner under Section 21/22/25/26 (1) resulting
in the enhancement of the tax mentioned above by Rs.....

2. You are required to deposit the total amount of Rs.....
in the following two instalments:

(a) first instalment of Rs..... on.....

(b) second instalment of Rs..... on.....
at the treasury or sub-treasury of the district where a receipt shall be
given to you.

3. If the instalment specified in paragraph 2 above is not paid by
the date noted against it, you will be liable to such penalty as the assessing
authority may direct under Section 31 of the Agricultural Income-
tax Act, 1948.

Agricultural Income-tax Officer,

Dated..... 19

(Place).....

Form No. A. I. T -C

Form of Appeal against Assessment to Agricultural Income-tax under Section 16

To
The Commissioner,

The petition of....., resident of....., post office..... district....., sheweth as follows :

1. Under the United Provinces Agricultural Income-tax Act, 1948, your petitioner has been assessed on the sum of Rs. for the year 19.....-19.....A copy of the order in question is attached hereto.

2. Your petitioner's agricultural income derived or deemed under the provisions of the Act to be derived from lands situated in the United Provinces, for the year 19.....-19.....calculated in the manner provided for in the Act, amounted to Rs.

3. During the said year your petitioner had no other agricultural income in the Province.

4. Your petitioner has made a return of his income to the Agricultural Income-tax Office at.....as required by notice under Section 15 of the Act and has further complied with all the terms of the notice served on him by the Agricultural Income-tax Officer under Section 16 (2).

or

5. Your petitioner was prevented by sufficient cause from making the return required by notice under Section 15 or did not receive the notice issued under sub-section (2) of Section 16 or had not a reasonable opportunity to comply or was prevented by sufficient cause from complying with the terms of the notice under sub section (2) of Section 16 or from producing the evidence required under sub-section (3) of Section 16.

6. A concise statement of the facts on which the petitioner relies for the purpose of this appeal is attached herewith.

7. Your petitioner, therefore, prays that he may be assessed accordingly (or that he may be declared not to be chargeable under the Act or that the assessment may be cancelled and remanded to the Agricultural Income-tax Officer for re-assessment).

(Concise statement of additional facts).

(Signed).....

Form of Verification

I,....., the petitioner, named in the above petition, do declare that what is stated therein, including the statement of facts referred to in paragraph 5 is true to the best of my information and belief.

(Signed).

Note:--The superfluous words in paragraphs 4 and 7 should be deleted.

Form No. A. I. T.-7*Form of Appeal against an order under Section 17***To**

The Commissioner,

The petition of sheweth as follows :

1. Under Section 17 of the United Provinces Agricultural Income-tax Act, 1948, a penalty of Rs has been imposed on your petitioner by the.... A copy of the order in question is attached hereto.

2. Your petitioner did not conceal the particulars of his agricultural income or deliberately furnish inaccurate particulars thereof but, as will be seen from the statement of facts attached, returned it at its real amount to the best of his knowledge and belief.

3. Your petitioner being aggrieved by the order of the assessing officer prays that the said order may be set aside on, amongst others, the following grounds :

(Signed).....

Form of Verification

I,, the petitioner, named in the above petition, do declare that what is stated therein including the statement of facts referred to in paragraph 3 is true to the best of my knowledge and belief.

(Signed).....

Occupation.....

Address.....

Form No. A. I. T.-8*Form of appeal against Orders under Section 18 of the United Provinces Agricultural Income tax Act***To**

The Commissioner,

The petition of sheweth as follows :

1. The Agricultural Income-tax officer at..... with the previous approval of the Collector of..... has passed an order dated....., of which a copy is attached under Section 18 of the United Provinces Agricultural Income-tax Act, 1948, that the sum payable as Agricultural Income-tax by the firm/association or individuals/company known as....., shall not be determined and that the share of your petitioner in the agricultural income of the said firm/association/company shall be included in his total income for the purpose of assessment, and a notice of the said order has been served upon your petitioner on the day of.....

2. Your petitioner, being aggrieved by the order of the Agricultural Incom-tax Officer, prays that the said order may be set aside on, amongst others, the following grounds :

(Signed).....

Form of Verification

I,....., the petitioner, named in the above petition, do declare that what is stated therein is true to the best of my knowledge and belief.

(Signed).....

Occupation

Address

Form No. A. I. T.-9

**OFFICE OF THE AGRICULTURAL INCOME-TAX OFFICER
IN CHARGE OF**

Certified that... (name and address of the company) was assessed to United Provinces Agricultural Income-tax on a total agricultural income of Rs.... for the year 19.....19....., that the assessed tax was recovered on, and that the percentage of agricultural income of the company to its total income (agricultural and non-agricultural) worked to Rs....

Agricultural Income-tax Officer.

Form No. A. I. T.-10

Particulars which the firms and partners thereof should submit along with their return in Form No. A. I. T.-3 (vide Section 20) :

Name of the firm.....

Principal place of business.....

Location and style of each branch.....

1.

Name of each partner	Address	Extent of share including interest, capital, salary, commission and other remuneration
----------------------	---------	--

Form No. A.I.T.-11

To be filled up and submitted with Form No. A. I. T.-3 by the *karta* or Manager of undivided Hindu family under Section 29.

Serial No.	Names of members of the family and their relationship with <i>karta</i>	Address	Remarks
1	2	3	4

Signature.....

Address.....

Dated.....

FORM NO. A. I. T.-12

The information required in this form shall be given by trustee, guardian or agent under Section 29 along with the return of total income in Form No. A. I. T.-3

Names and addresses of persons for whom the assessee is a trustee, guardian or agent

Whether trustee, guardian, agent or representative

Name	Address	Whether trustee, guardian, agent or representative

Signature.....

Address.....

Dated.....

Form No. A. I. T.-13

*Register of demand on account of Agricultural Income-tax maintained by the Assessing Officer
sub-division.....district.....*

Sl. no.	Name of assessee with full particu- lars	Reference to the assess- ment file	Amount of tax assessed under Section 16 or 18	Amount of penalty imposed under Section 16 or 18	Total	Amount of each instalment and last date of payment	Date of imposi- tion of penalty under Section 31	Date of imposi- tion of arrears deposi- ted as shown in treasury chalan	Date and amount of collection at the tahsil as per chalan received	Demand commu- nicated to Collec- tor for reco- very as per Section 31 of land revenue	Date of com- mu- nica- tion	Amount	Remarks									
									1	2	3	4	5	6	7	8	9	10	11	12	13	14
																		1st (date) _____ Rs. _____	2nd (date) _____ Rs. _____			

Note:—The demand in Columns 4 to 6 should be revised if varied subsequently by any order and the fact with particulars noted in columns of remarks.

Form No. A. I. T.-14

Register of demand of Agricultural Income-tax [rule 29] reported by the Assessing Officer for collection as arrears of land revenue under rule 28 (4)

Serial No.	Name of the assessing officer communicating the demand	Reference to assessment file	No. of defaulting assessee with full particulars	Date of receiving the communication	Amount of Agricultural income-tax or penalty to be recovered as arrears of land revenue	Date of communication to the Tahsildar	Remarks
1	2	3	4	5	6	7	8

Note—(1) The register has to be maintained separately for each tahsil.

(2) The demand may be revised, if varied subsequently and the fact noted in the column of remarks.

Form No. A. I. T.-15

Register of demand and collection of Agricultural Income-tax [rule 31 (b)] to be recovered as arrears of land revenue

Tahsil—_____, district—_____,

Serial No.	Date of receipt of intimation of demand from the collector	Name of the assessing officer	Reference to assessment file no.	Name with particulars of the defaulting assessee	Amount collection of arrears of land revenue recovered	Date of issue of chalan	Amount collected	Date of forwarding one part of the chalan to assessing officer	Remarks
1	2	3	4	5	6	7	8	9	10

Note—The demand may be revised, if varied subsequently and the fact noted in the column of remarks.

Form No. A. I. T.-16

Return of collection of Agricultural Income-tax for the fortnight ending
tahsil..... submitted to Collector on

Serial No.	Demand			Collection			Total	Balance	Remarks
	Designation	Total demand including penalty up to tabsil during officer	Demand communicated to the beginning of the fort-night under report	Total	Till the beginning of the fort-night under report	During the fort-night under report			
1	2	3	4	5	6	7	8	9	10

Note—In case the figure in column 3 is not the same in column 5 of the last fortnightly statement the difference should be explained in the remarks column with reference to particulars of the order.

Form No. A. I. T.-17

Register of refunds

Serial No.	No. of assessment files	Date and number of original credit	Name of payee with place of residence	Amount to be refunded	Signature of payee in token of having received the voucher	Initial of officer	Remarks (the authority under which the refund is made, should be quoted here)
1	2	3	4	5	6	7	8

Notifications

Notification No. 4/3A. I. T.-5, dated February 16, 1940.

Under Section 6 (2) (a) of the Agricultural Income-tax Act (United Provinces Act No. III of 1949), the Board of Revenue hereby fix for the present 7.5 as the multiple for calculation of the agricultural income of a person mentioned in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1) of Section 2 of the Act for all districts in the United Provinces.

Notification No. 4495/A. I. T. 7., dated 4/6/1953, published in U. P. Gaz. dated 25/7/1953, Pt. I. A. for 1720.

In supersession of Board of Revenue, U. P., Lucknow, notification No. 413, dated February 16, 1949, and in exercise of the powers conferred upon me under Section 6 (2) (a) of the U. P. Agricultural Income-tax Act, 1948, as amended by Section 7 (ii) (a) of the U. P. Agricultural Income-tax (Amendment) Act, 1953, I hereby fix $12\frac{1}{2}$ as the multiple for the calculation of agricultural income for the purposes of Section 2 (1) (b), of the U. P. Agricultural Income-tax Act, 1948, for all districts in Uttar Pradesh :

Provided that the multiple for calculating income from land newly brought under cultivation shall be as given in the Schedule below :

SCHEDULE

Class of land as recorded in the *khatauni*.

Culturable waste. Year of cultivation.	Multiple.	Barren land. Year of cultivation.	Multiple.
Ist.	Nil	Ist.	Nil.
2nd.	2	2nd.	Nil.
3rd.	4	3rd.	Nil.
4th.	8	4th.	2
5th. and subsequent year.	$12\frac{1}{2}$	5th.	4
		6th.	8
		7th. and subsequent year.	$12\frac{1}{2}$

Notification No. U. O./144/I-C-430-C-54, dated 23rd October, 1954 published in U. P. Gazette, dated 30th October, 1954 at page 1304.

In exercise of the powers conferred by sub-section (3) of Section 2 of the U. P. Agricultural Income-tax Act, 1948 (U. P. Act III of 1949), the Governor, Uttar Pradesh is pleased to appoint all Commissioners and Additional Commissioners of Divisions, appointed under Section 12 and 13 of the U. P. Land Revenue Act, 1901 (Act III 1901), to perform the duties of the Commissioner and the Additional Commissioner, as the case may be, under the U. P. Agricultural Income-tax Act, 1948.

**Notification No. 10782/A. I. T.-182, dated 6th November, 1954
published in U. P. Gazette, dated 20th November, 1954.
Part I-A, page 1820.**

In partial modification of notifications No. 4495/A.I.T.-182 and No. 9088/A.I.T.-182, dated June 4, and October 14, 1953, respectively and in exercise of the powers conferred upon me under Section 6 (2) (a) of the U. P. Agricultural Income-tax Act, 1948 (U. P. Act III of 1949), I hereby fix twelve and a half as the multiple for the calculation of agricultural income for the purposes of Section 2 (1) (b) of the said Act, provided that the multiple for calculating income for different kinds of groves and orchards for different districts shall be as below :

District	Mango grafts	Mango seedlings	Citrus	Guava	Litchi	Loquat	Jack fruit	Aonla	Other fruits
1	2	3	4	5	6	7	8	9	10
<i>Province of Agra</i>									
Dehra Dun	6	2	5	5	12				5
Saharanpur	12	4	7	5	10	10			5
Muzaffarnagar	10	3	7	5			8		
Meerut	10	3	7	5					
Bulandshahr	10	3	6	5					
Aligarh	6	2	6	6					
Mathura	5	2	6	6					
Agra	6	2	6	6					
Mainpuri	6	2	6	6					
Etah	6	2	6	6					
Bareilly	8	3	4	6					
Bijnor	6	2	4	6					
Budaun	6	2	5	6					
Moradabad	8	3	5	5					
Shahjahanpur	8	3	5	5					
Pilibhit	6	2	5	5					
Rampur	8	3	6	6					
Farrukhabad	10	3	8	8					
Etawah	6	2	6	6					
Kanpur	8	3	5	5					
Fatehpur	6	2	4	4					
Allahabad	8	3	5	5					
Banda	4	1	4	4					
Hamirpur	5	2	4	4					
Jhansi	4	2	6	6					
Jalaun	5	2	5	5					
Banaras	10	3	5	6					
Mirzapur	8	3	3	3					
Jaunpur	8	3	5	6					
Ghazipur	6	2	4	5					
Ballia	6	2	4	5					
Gorakhpur	5	2	4	5					
Basti	6	2	4	4					
Azamgarh	6	2	4	4					
Deoria	6	2	4	4					

District	1	Mango grafts		Mango seedlings		Citrus		Guava		Loquat		Jack fruit		Aonla		Other fruits	
		2	3	4	5	6	7	8	9	10							
<i>Azadkh :</i>																	
Lucknow	12	4	3	5	6	5	5	5	5	4	5	6	6	5	4	4	4
Unnao	8	3	3	4	5	5	5	5	5	4	5	6	6	5	4	4	4
Rae Bare'i	8	3	3	4	5	5	5	5	5	4	5	6	6	5	4	4	4
Sitapur	10	3	3	4	5	5	5	5	5	4	5	6	6	5	4	4	4
Hardoi	10	3	3	4	5	5	5	5	5	4	5	6	6	5	4	4	4
Kheri	8	3	3	4	5	5	5	5	5	4	5	6	6	5	4	4	4
Fairabad	7	2	2	3	4	5	5	5	5	4	5	6	6	5	4	4	4
Gonda	6	2	2	3	4	5	5	5	5	4	5	6	6	5	4	4	4
Bahraich	5	2	2	3	4	5	5	5	5	4	5	6	6	5	4	4	4
Sultanpur	6	3	3	4	5	5	5	5	5	4	5	6	6	5	4	3	3
Pratapgarh	10	3	3	4	5	5	5	5	5	4	5	6	6	5	4	4	4
Barabanki	8	3	3	4	5	5	5	5	5	4	5	6	6	5	4	4	4

Notes.—(1) 'Other fruits' mentioned in column 10 will include Litchi, Loquat, Jack fruit and Aonla in all the districts except where separate multiples have been shown for one or all of these fruits.

(2) For Kunnaun Division the multiple for orchards within 5 miles of cart-roads will be 12, within 5 to 10 miles of cart-roads 8 and beyond 10 miles of cart-roads 4.

(3) For mixed groves the multiple will be the one fixed for the kind of trees which predominate.

THE AGRICULTURISTS' LOANS ACT, XII OF 1884

CONTENTS

Sections	Sections
Preamble	4. Power for [State] Government to make rules.
1. Short title, commencement.	5. Recovery of loans.
2. Local extent.	6. Liability of joint borrowers as among themselves.
3. [Repealed].	

THE AGRICULTURISTS' LOANS ACT, XII OF 1884

(As amended upto U. P. Act XII of 1948 and adapted)

[Received the assent of the Governor-General on the 24th July, 1884]

An Act to amend and provide for the extension of the Northern India Takkavi Act, 1879.

Preamble.—Whereas it is expedient to amend the Northern India Takkavi Act, 1879, and provide for its extension to any part of [Part A States or Part C States]. It is hereby enacted as follows :—

Legislative changes:—In the preamble the words [Part A States or Part C States] were substituted for the words [Provinces of India] and the word [State]

was substituted for [Provincial] by the Adaptation Order, 1950 throughout the Act.

Prefatory note:—The following extract from the Statement of Objects and Reasons may be usefully noticed :—

"Assistance from the State is necessary at the present time from the relief of indebtedness; many tenants would purchase hereditary rights in land, if they had the necessary money, and the payment of the sums by tenants to landlords would enable the latter to pay off many of their debts to money-lenders. Further, the acquisition of hereditary rights in land by tenants would lead to a permanent improvement in the land and in the condition of the tenantry."—*Vide* U. P. Gazette, dated the 7th April, 1934, Part VIII, 47. For the Proceedings in Council see Council Proceedings Vol. LXIII, p. 27—42.

1. Short title and commencement.—(1) This Act may be called the Agriculturists' Loans Act, 1884 ; and

(2) It shall come into force on the first day of August, 1884.

Date of enforcement.—Act XII of 1884 came into force with effect from August 1, 1884 and Act XII of 1934 came into force from January 19, 1935 *vide* Noti. No. 110A/I-A-228 B, dated January 15, 1935, Pt. I, p. 66.

2. Local extent.—(1) This section and Section 3 extend to [all the States of India].

(2) The rest of this Act extends in the first instance only to the [Bombay, Uttar Pradesh, Punjab, Madhya Pradesh, Assam, Delhi and Ajmer.]

(3) But any [State Government] may, from time to time, by notification in the Official Gazette, extend the rest of this Act to the whole or any part of the territories under its administration.

Legislative changes.—In sub-section (1) the words [all the States of India] were substituted for the words [British India] and in sub-section (2) the words [Bombay, Uttar Pradesh, Punjab, Madhya Pradesh, Assam, Delhi and Ajmer] for the words [territories respectively administered by the Governor of the N. W. P., Punjab, and the Chief Commissioner of Oudh, C. P., Assam and Ajmer] by A. O. 1950.

Note.—This Act has been extended to Rampur State by Section 3 of U. P. Act XII of 1950 with effect from 30th December, 1949 and to Banaras and Tehri-Garhwal with effect from 3rd November, 1949 by Section 3 of Banaras and Tehri-Garhwal (Application of Laws) Order, 1949.

3. * * * * *

Legislative changes.—This section was repealed by the Repealing Act I of 1938.

4. Power for [State] Government to make rules.—(1) The [State] Government (a) * * * may, from time time, * * * (b) make rules as to loans to be made to owners and occupiers of arable land for the relief of distress, [the payment of existing debt] (c) the purchase of seed or cattle or any other purpose not specified in the Land Improvement Loans Act, 1883, but connected with agricultural [and fruit growing] d) objects [including the purchase of rights in agricultural land].

(2) All such rules shall be published in the Official Gazette.

Legislative changes.—(a) The words [or in a province for which there is a Board of Revenue or Financial Commissioner, such Board or Financial Commissioner subject to the control of the Provincial Government.] were omitted by Section 2 of the Board of Revenue Act, XII of 1922, which were inserted by Act IV of 1914.

(b) The words [subject to the control of G. G. in C] were omitted by Section 2 of Act IV of 1914.

(c) The words in italics were added by Sections 3 and 4 of the U. P. Board of Revenue Act, XII of 1934.

(d) The words [and fruit growing] were substituted between the words [agricultural] and [objects] by Section 2 of U. P. Act XII of 1948.

Note 1—Loan.—It must be under the Act; a loan granted under the Land Improvement Loans Act, 1883 cannot be recovered under this Act¹.

For rules, see notes.—

- No. 317-R/I-228-B(ii)-39, d. Aug. 8, 1942, in Gaz. 1942, Pt. I-A, p. 46A.
 No. 2820-R/I-433-B-36, d. Sept. 7, 1942, in Gaz. 1942, Pt. I-A, p. 315.
 No. 1259/I-370-B-42, d. June 25, 1943, in Gaz. 1943, Pt. I-A, p. 32A.
 No. 2903/I-482-B-42, d. June 28, 1943, in Gaz. 1943, I-A, p. 182.
 No. 2313/I-129-14-42, d. Aug. 7, 1943, in Gaz. 1943, Pt. I-A, p. 218.
 No. 4066/I-129-14-42, d. Dec. 23, 1944, in Gaz. 1944, Pt. I-A, p. 381.
 No. 4257/I-1361-14-44, d. May 22, 1945, in Gaz. 1945, Pt. I-A, p. 25A.
 No. 2383/I-433-B-36, d. Sept. 3, 1945, in Gaz. 1945, Pt. I-A, p. 42A.
 No. 2757/I-433-B-36, d. March 3, 1946, in Gaz. 1946, Pt. I-A, p. 79.
 No. 150(3)/I-670-B-45, d. April 3, 1946, in Gaz. 1946, Pt. I-A, p. 169.
 No. 1645/I-433-B-36, d. Sept. 6, 1946, in Gaz. 1946, Pt. I-A, p. 847.
 No. 4980(i)/I-758-B-46, d. Feb. 5, 1947, in Gaz. 1947, Pt. I-A, p. 54.
 No. 5818(2)/I-107-B-46, d. Feb. 11, 1947, in Gaz. 1947, Pt. I-A, pp. 93-94.
 No. 4280(3)/I-B-603-B-47, d. Aug. 8, 1947, in Gaz. 1947, Pt. I-A, p. 488.
 No. 114(4)/I-B-36-B-48, d. Feb. 27, 1948.
 No. 2858/I-B-502-B-43, d. Nov. 5, 1948, in Gaz. 1948, Pt. I-A, p. 526.
 No. 3753(i)/I-B-805-B-48, d. June 22, 1949, in Gaz. 1949, Pt. I-A, p. 311.
 No. 3824/I-1-102-B-49, d. June 23, 1949, in Gaz. 1949, Pt. I-A, p. 317.
 No. 8178/I-14-1450-B-47, d. May 25, 1951 in Gaz. 1951, Pt. I-A, p. 371.
 No. 1467/I-1-12-C-B/1950 d. April 26, 1952 in Gaz. 1952, Pt. I-A, p. 301.
 No. 5289/I-B-279-B, d. June 24, 1952, in Gaz. 1952, Pt. I-A, p. 382.
 No. 1816R/I-B-1951, d. Oct. 6, 1952, in Gaz. 1952, Pt. I-A, p. 676.
 U. P. Gaz. d. 26/9/1952, Pt. I-A, p. 2298 & U. P. Gaz. d. 29/3/51, Pt. I-A, p. 302.

5. Recovery of loans.—Every loan made in accordance with such rules, all interest (if any) chargeable thereon and costs (if any) incurred in making or recovering the same, shall, when they become due, be recoverable from the person to whom the loan was made, or from any person who has become surety for the repayment thereof, as if they were arrears of land revenue or costs incurred in recovering the same due by the person to whom the loan was made or by his surety.

Sale and Effect.—The purchaser stands in respect of his rights and liabilities in the same position as defaulting tenant whose right, title and interest has been sold, and is therefore liable for arrears of rent². Property other than mahal or patli sold does not avoid the prior encumbrance³. Relinquishment by tenant of trees to Zamindar would give no benefit to Zamindar after mortgage⁴. Warrant can be signed by Tahsildar if authorized by Collector⁵. Collector can sell any property belonging to defaulter without even a notice to a mortgagee if any⁶. Claim cognizable by Revenue Court alone⁷. Right to claim damages⁸.

6. Liability of joint borrowers as among themselves.—When a loan is made under this Act to the members of a village community or to any other persons on such terms that all of them are jointly and severally bound to the Government for the payment of the whole amount payable in respect thereof, and a statement showing the portion

-
- | | |
|---|---|
| 1. <i>C. Vasantji v. D. Maganlal</i> , 1939 B 182; See also <i>Secretary of State v. M. A. C. A. Muladies</i> , 1939 on p. 711. | 4. <i>Baba Lal v. Ram Sahai</i> , 26 A 540. |
| 2. In <i>A. Amraotker v. T. K. Patil</i> , 1942 N 50; See also <i>L. N. Singh v. N. K. Das</i> , 29 C 537. | 5. <i>Jamal Husain v. K. E.</i> , 1926 O 296. |
| 3. <i>Sheo Sampat Pande v. Bandhu Prasad Misir</i> , 22 A 321. | 6. <i>G. Bhugrajappa v. K. Halappa</i> , 1946 M 227. |
| | 7. <i>Mikan Chawl v. Kauhari</i> , 1921 A 80. |
| | 8. <i>Daya Ram v. Secretary of State</i> , 1927 A 672; <i>Sobha Ram v. Ram Prasad</i> , 8 RD 199=6 UD 216=5 LR 263. |

of that amount which as among themselves each is bound to contribute is entered upon the order granting the loan and is signed, marked, or sealed by each of them or his agent duly authorized in this behalf and by the officer making the order, that statement shall be conclusive evidence of the portion of that amount which as among themselves each of those persons is bound to contribute.

THE UNITED PROVINCES AERIAL ROPEWAYS ACT, 1922

(U. P. Act No. 1 of 1922)

CONTENTS

Sections

1. Title, extent and commencement.
2. Definitions.
- PROCEDURE AND PRELIMINIRY INVESTIGATIONS**
3. Application for concession.
4. Contents of application.
5. Preliminary investigations.
- ORDERS AUTHORIZING THE CONSTRUCTION OF AERIAL ROPEWAYS**
6. Publication of proposed order authorizing construction and contents of such order.
7. Final order.
8. Cessation of powers given by an order.
9. Further order.
- INSPECTION OF AERIAL ROPEWAYS**
10. Inspection of aerial ropeways before opening.
11. Appointment of Inspector.
12. Powers of Inspector.
13. Facilities to be afforded to Inspector.
- CONSTRUCTION AND MAINTENANCE OF AERIAL ROPEWAYS**
14. Authority of promoter to execute works.
15. Authority of promoter to place posts and suspend ropes.
16. Temporary entry upon land for repairing or preventing accident.
17. Removal of obstructions.
18. Procedure regarding disputes on matters referred to in Sections 15, 16 and 17.
- WORKING OF AERIAL ROPEWAYS**
19. Promoter to fix rates or fares.
20. Duty of promoter to work aerial ropeway without partiality.
21. Reporting of accidents.
22. Power of State Government to close and re-open aerial ropeways.
- DISCONTINUANCE OF AERIAL ROPEWAYS**
23. Cessation of powers of promoter on discontinuance of aerial rope-

Sections

- ways.
24. Power of State Government to remove aerial ropeway on cessation of promoter's powers.
- INABILITY OR INSOLVENCY OF PROMOTER**
25. Proceedings in case of inability or insolvency of promoter.
- BY-LAWS**
26. Power of promoter to make bye-laws.
- SUPPLEMENTARY PROVISIONS**
27. Returns.
28. Protection of roads, railways, tramways and waterways.
29. Acquisition of land on behalf of a promoter.
- RULES BY STATE GOVERNMENT**
30. Power of State Government to make rules.
- OFFENCES PENALTIES AND ARREST**
31. Failure of promoter to comply with Act.
32. Unlawfully obstructing promoter's servant in discharge of his duty.
33. Unlawfully interfering with aerial ropeway.
34. Punishment for acts or attempts tending to endanger safety of persons travelling or being upon aerial ropeway.
35. Arrest for offences against certain sections, and procedure thereupon.
36. Notification of claims to refunds of overcharges and to compensation for losses.
- Rules**
- Survey, Construction, Maintenance and Working.
- Returns.
- Notices.
- Bye-Laws.
- Duties of Inspector.
- Accidents.
- Duties of Magistrates.
- Duties of Police Officers.

Received the assent of the Governor on the 8th February, 1922, and of the Governor-General on the 10th March, 1922, and was published¹ under Section 81 of the Government of India Act on the 25th March, 1922.]

1. See Gaz., 1922, Pt. VII, pp. 85-98.

An Act to authorize, facilitate, and regulate the construction and working of aerial ropeways in the United Provinces.

Where it is expedient to authorize, facilitate, and regulate the construction and working of aerial ropeways in the United Provinces ; it is hereby enacted as follows :—

Prefatory Note :—For S. O. R., see Gaz., 1921, Pt. VIII, p. 576 ; for R. S. Com, see *ibid*, 1922, Pt. VIII, pp. 36—38 ; for discussion, see L. C. Pro. d. July 25, 1921, July 29, 1921, Jan. 24, 1922 and Jan. 25, 1922, in Vol. III, p. 54, Vol. III, pp. 333-334, Vol VI, p. 105 and Vol. VI, pp. 129—136, respectively.

1. Title, extent and commencement.—(1) This Act may be called the United Provinces Aerial Ropeways Act, 1922.

(2) It extends to territories * * * * administered by the [State Government]³ of [Uttar Pradesh]⁴.

Note :—This Act has been extended to the merged State of Rampur by the Rampur (Application of Laws) Act, 1950, with effect from December, 30, 1949 and to the merged States of Banaras and Tehri-Garhwal, by the Banaras (Application of Laws) Order, 1949 and the Tehri Garhwal (Application of Laws) Order, 1949, respectively, with effect from November 30, 1949.

(3) It shall come into force at once.

2. Definitions.—In this Act unless there is anything repugnant in the subject or context,—

- (1) “Aerial Ropeway” means an aerial ropeway (or any portion thereof) for the public carriage of passengers, animals or goods, and includes all ropes, posts, carriers, stations, offices, warehouses, workshops, machinery and other works used for the purposes of, or in connection with, and all land appurtenant to, such aerial ropeway ;
- (2) “Carrier” means any vehicle or receptacle hung or suspended from, or hauled by, a rope and used for the carriage of passengers, animals, or goods or for any other purpose in connection with the working of an aerial ropeway ;
- (3) “Collector” means the chief officer in charge of the revenue administration of a district and includes any officer specially appointed by the [State Government]³ to discharge the functions of a Collector under this Act ;
- (4) “Inspector” means an Inspector of Aerial Ropeways appointed under this Act ;
- (5) “Order” means an order authorizing the construction of an aerial ropeway under this Act, and includes a further order substituted for, or amending, extending or revoking, that order.
- (6) “Post” means a post, trestle, standard, strut, stay, or other contrivance or part of contrivance for carrying, suspending or supporting a rope ;
- (7) “Prescribed” means prescribed by rules made by the [State Government]³ under Section 30 ;

2. The words “for the time being” omit. by the A. O. 1937.

the A. O. 1937 for [L. G.]

3. Subs. by the A. O. 1950 for [Prov. Govt.] which had been Subs. by

4. Subs. by the A. O. 1950 for [the United Provinces].

- (8) "Promoter" means the [State Government]⁶, a local authority, a company incorporated under the Indian Companies Act, 1913, a railway company as defined in the Indian Railways Act, 1890, or any person in whose favour an order has been made under Section 7, and includes the [State Government]⁶, a local authority, a company, a railway company, or a person on whom the rights and liabilities conferred and imposed on the promoter by this Act and by rules and orders made under this Act, as to construction, maintenance, and use of the aerial ropeway have devolved;
- (9) "Rate" includes any fare, charge or other payment for the carriage of passengers, animals, or goods;
- (10) "Rope" includes any cable, wire, rail or way, whether flexible or rigid; for suspending, carrying or hauling a carrier, if any part of such cable, wire, rail or way is carried overhead and is suspended from or supported on posts.

PROCEDURE AND PRELIMINARY INVESTIGATIONS

3. Application for concession.—Every application by an intending promoter other than the [State Government]⁶ for permission to undertake the necessary preliminary investigations shall be submitted to the [State Government]⁶.

4. Contents of application.—Such application shall include—

- (a) a description of the undertaking and of the route to be followed by the proposed aerial ropeway;
- (b) description of the system of construction and management and the advantages to the community to be expected from the ropeway;
- (c) an approximate estimate of the cost of construction thereof;
- (d) a statement of the estimated working expenses and profits expected;
- (e) a statement of the maximum and minimum rates proposed to be charged;
- (f) such maps, plans, sections, and diagrams as the [State Government]⁶ may require in order to form an idea of the proposal.

5. Preliminary investigations.—Subject to the provisions of this Act, and of Section 4 of the Land Acquisition Act, 1894, the [State Government]⁶ may * * *⁶ accord sanction to the promoter to make such surveys as may be necessary, and require him to submit such detailed estimates, plans, sections, specifications, and such further information as it may deem necessary for the full consideration of the proposal.

5. Subs. by the A O 1950 for [Prov. Govt.] which had been subs. by the A O 1937 for [L G].

6. The words [at its discretion] omit, by the A O 1937.

The promoter shall not be entitled to claim any compensation from [the Government]⁷ for any expense incurred under this section in the event of his application being ultimately refused.

ORDERS AUTHORIZING THE CONSTRUCTION OF AERIAL ROPEWAYS

6. Publication of proposed order authorizing construction and contents of such order.—(1) The [State Government]⁸ may, on application of the details supplied in accordance with Section 5, publish in the [Official Gazette]⁹, a draft of the proposed order authorizing the construction by or on behalf of such promoter, subject to such restrictions and conditions as the [State Government]⁸ may think proper, of an aerial ropeway within any specified area or along any specified route—

- (a) for the public carriage of passengers ;
- (b) for the public carriage of passengers, animals and goods ; or
- (c) for the public carriage of animals and goods.

(2) A notice shall be published with the draft stating that any objection or suggestion which any person may desire to make with respect to the proposed order will, if submitted to the [State Government]⁸ on or before a date to be specified in the notice, be received and considered.

(3) The [State Government]⁸ shall cause public notice of the intention to make the order to be given at convenient places within the said area, or along the said route ; and shall, so far as may be conveniently possible, cause a like notice to be served on every owner or occupier of land over which such route lies, and shall consider any objection or suggestion with respect to the proposed order which may be received from any person within a date to be specified in such notice.

(4) The draft of the proposed order may specify—

- (i) a time within which the capital required for the construction of the aerial ropeway shall be raised ;
- (ii) a time within which the construction shall be commenced ;
- (iii) a time within which the construction shall be completed ;
- (iv) conditions under which a concession, guarantee or financial assistance may be given by the [State Government]⁸, or a local authority to the promoter ;
- (v) rights of purchase by the [State Government]⁸ or a local authority ;
- (vi) rules regarding audit and accounts ;
- (vii) rules regarding arbitration for the settlement of disputes ;
- (viii) specifications relating to the structural design, quality of materials, factors of safety, method of computing stresses, and other such technical details as may be considered necessary ;

7. Subs. by the A.O. 1950 [the Crown] which had been subs. by the Govt., which had been subs. by the A.O. 1937 for [L.G.] 1937 for [Govt.].

8. Subs. by the A.O. 1950 for [Prov].

9. Subs. for [Gazette] by the A.O. 1937.

- (ix) rules relating to the construction of the ropeway over railways, roads or other public ways of communication;
- (x) conditions under which the promoter may sell or transfer his rights to another company;
- (xi) conditions under which the ropeway may be taken over by the [State Government]¹⁰ to be worked by itself or by a local authority or by a company other than the promoter;
- (xii) the motive power to be used on the aerial ropeway and the conditions, if any, on which such power may be used;
- (xiii) the minimum headway to be maintained under different parts of the rope;
- (xiv) the points under the rope at which bridges or guards shall be constructed and maintained;
- (xv) the amount of security, if any to be deposited by the promoter in the event of his application being granted; and
- (xvi) such other matters as the [State Government]¹⁰ may deem necessary.

7. Final order.—(1) If after considering any objections or suggestions which may have been made in respect to the draft on or before the specified date, the [State Government]¹⁰ is of opinion that the application should be granted with or without modification or subject or not to restriction or condition, it may make an order accordingly.

(2) Every order authorizing the construction of a ropeway shall be published in the [official Gazette]¹¹ and such publication shall be conclusive proof that the order has been made as required by this section.

8. Cessation of powers given by an order. If a promoter authorized by an order to construct an aerial ropeway does not, within the time specified in the order,

- (a) succeed in raising the full amount of capital required for the completion of the ropeway; or
- (b) make, in the opinion of the [State Government]¹⁰, substantial progress with the construction of the ropeway; or

(c) complete the construction thereof; the powers given to the promoter by such order shall, unless the [State Government]¹¹ prolongs the time so specified, cease to be exercised.

9. Further order.—(1) The [State Government]¹⁰ in its discretion may, on the application of the promoter, revoke, amend, or extend the order by a further order.

(2) An application for a further order shall be made in the same manner, and subject to the same conditions, as an application for an order.

10. Subs. by the A. O. 1950 for [Prov. Govt.] which had been subs. by the A. O. 1937 for [L. G.]

11. Subs. for [Gazette] by the A. O. 1937.

(3) If it grants the application it shall make the further order in the same manner as an order, except that the rights, powers, and authorities asked for in the said application shall not be increased, modified or restricted by the further order without the consent in writing of the promoter.

INSPECTION OF AERIAL ROPEWAYS

10. Inspection of aerial ropeways before opening. (1) No aerial ropeway shall be opened for any kind of traffic until the [State Government]¹² has by order sanctioned the opening thereof for that purpose. The sanction of the [State Government]¹² under this section shall not be given until an Inspector has, after inspection of the ropeway, reported in writing to the [State Government]¹²--

- (a) that he has made a careful inspection of ropeway and appurtenances ;
- (b) that the moving and fixed dimensions and other conditions prescribed under Section 6 (4) and 7 (1) have been complied with ;
- (c) that the ropeway is sufficiently equipped for the traffic for which it is intended ;
- (d) that the bye-laws and working rules prescribed by Section 26 and 30 have been duly made, approved, and promulgated in the manner prescribed in those sections ; and
- (e) that in his opinion the ropeway is fit for public traffic and can be used without danger to the public using it or to the general public.

(2) The provisions of sub-section (1) shall extend to the opening of additional sections of the ropeway; to deviation lines and any alteration or reconstruction materially affecting the structural character of any work to which the provisions of sub-section (1) apply or are extended by this sub-section.

11. Appointment of Inspector.—(1) The [State Government]¹² may appoint an Inspector of aerial ropeways.

(2) It shall be the duty of such Inspector from time to time to inspect aerial ropeways and to determine whether they are maintained in a fit condition and worked with due regard to the convenience and safety of the public, and consistently with the provisions of this Act.

12. Powers of Inspector.—An Inspector shall, for the purpose of any of the duties which he is authorized or required to perform under this Act, be deemed to be a public servant, as defined in the Indian Penal Code, and shall for that purpose have such powers as may be prescribed by [the State Government]¹³ under clause (a) of sub-section (2) of Section 3¹.

13. Facilities to be afforded to Inspector.—The promoter and his servants and agents shall afford to the Inspector all reasonable facilities for performing the duties and exercising the powers imposed and conferred upon him by this Act or by rules made thereunder.

12. Subs. by the A.O. 1950 for [Prov. Govt.] which had been subs. by the A.O. 1937 for [L. G.]

13. Subs. by the A. O. 1950 for [Prov. Govt.] which had been subs. by the A. O. 1937 for [the Govt.]

CONSTRUCTION AND MAINTENANCE OF AERIAL ROPEWAYS

14. Authority of promoter to execute works.—Subject to the provisions of this Act, and in the case of immovable property not belonging to the promoter, to the provisions of any enactment for the time being in force for the acquisition of land for public purposes and for companies, a promoter may—

- (a) make such bridges, culverts, drains, embankments, and roads as may be necessary ;
- (b) erect and construct such machinery, offices, stations, warehouses and other buildings, works and conveniences as may be necessary ;
- (c) erect such structures for protection purposes, over railways, roads, or other public ways of communication as may be deemed necessary ; and
- (d) do all other acts necessary for constructing, maintaining, altering, repairing, and using the aerial ropeway.

15. Authority of promoter to place posts and suspend ropes.—

(1) Notwithstanding anything contained in the provisions of any enactment for the time being in force for the acquisition of land for public purposes, a promoter may --

- (a) place and maintain posts in or upon any immovable property, and
- (b) suspend and maintain a rope over, along or across any immovable property :

Provided that—

- (i) the promoter shall not exercise the power conferred by this sub-section except for the purposes of an aerial ropeway, the construction of which has been authorized by the order under Section 7 ;
- (ii) the promoter shall not acquire any right other than that of user only in the property under, along, in or upon which the promoter places a post or suspends or maintains a rope ;
- (iii) in the exercise of the powers conferred by this sub-section the promoter shall do as little damage as possible, and, when he has exercised those powers in respect of any property, shall pay full compensation to all persons interested for any damage sustained by them by reason of the exercise of those powers.

(2) If the exercise of the powers conferred by sub-section (1) is resisted or obstructed, the Collector may, in his discretion, order that the promoter shall be permitted to exercise them.

(3) In case of any dispute as to the amount of compensation to be paid by the promoter under clause (iii) of the proviso to sub-section (1) the matter shall be referred to the Collector for decision.

16. Temporary entry upon and for preparing or preventing accident.—(1) A promoter may at any time, for the purpose of examining, repairing or altering an aerial ropeway or of preventing any

accident, enter upon any immovable property adjoining such ropeway and may do all such works as may be necessary for such purposes.

(2) In the exercise of the powers conferred by sub-section (1), the promoter shall cause as little damage as possible, and compensation shall be paid by him for any damage so caused ; and, in the case of any dispute as to the amount of such compensation, the matter shall be referred to the Collector for decision.

17. Removal of obstructions.—(1) Where any tree standing or lying near an aerial ropeway, or where any structure or other object which has been placed or has fallen near an aerial ropeway, subsequent to the construction of such aerial ropeway interrupts or interferes with or is likely to interrupt or interfere with the construction, maintenance, alteration or use of the ropeway, the Collector may, on the application of the promoter, cause the tree, structure or object to be removed or otherwise dealt with as he thinks fit.

Explanation.—For the purpose of this sub-section the expression "tree" shall be deemed to include any shrub, hedge, junglegrowth or other plant.

(2) When disposing of an application under sub-section (1) the Collector shall award to the person interested such compensations as the Collector thinks reasonable, and the Collector may recover such amount from the promoter as if it were an arrear of land revenue.

18. Procedure regarding disputes on matters referred to in Sections 15, 16 and 17.—No suit shall lie, in respect of any matter referred to in Sections 15, 16 or 17, but every order, other than an award, made by a Collector under any of those sections shall be subject to revision by the [State Government]¹⁴ while every award of his may be questioned in the court of the District Judge in conformity, as far as possible, with the procedure prescribed in the Land Acquisition Act.

WORKING OF AERIAL ROPEWAYS

19. Promoter to fix rates or fares—A promoter shall, for the purposes of working on an aerial ropeway and subject to such maximum and minimum rates as may be prescribed, have power from time to time to fix rates for the carriage of passengers, animals, or goods on the aerial ropeway.

20. Duty of promoter to work aerial ropeway without partiality.—A promoter shall, for the purposes of working an aerial ropeway make or give any undue or unreasonable preference or advantage to or in favour of any particular person or any particular description of traffic in any respect whatsoever or subject any particular person or any particular description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

21. Reporting of accidents.—When any of the following accidents occur in the course of working on an aerial ropeway, namely :—

(a) any accident attended with loss of human life or with hurt as defined in the Indian Penal Code, or with serious injury to property :

14. Subs. by the A. O. 1950 for [Prov. Govt.] which had been subs. by the A. O. 1937, for [L. G.].

- (b) any accident of a description usually attended with loss of human life or with such hurt as aforesaid or with serious injury to property;
- (c) any accident of any other description which the [State Government]¹⁵ may notify in this behalf in the [Official Gazette]¹⁶;

the promoter shall, without unnecessary delay, send notice of the accident to the [State Government]¹ and the Inspector of the aerial ropeway; and the promoter's servant in charge of the station on the aerial ropeway nearest to the place at which the accident occurred, or, where there is no station, the promoter's servant in charge of the section of the aerial ropeway on which the accident occurred, shall, with the least possible delay, give notice of the accident to the magistrate of the district in which the accident occurred and to the officer in charge of the police station within the local limits of which it occurred or to such other magistrate and police officer as the [State Government]¹⁶ may appoint in this behalf and shall also send information to the nearest dispensary.

22. Power of State Government to close and re-open aerial ropeways.—(1) If, after inspecting any aerial ropeway opened to traffic, an Inspector is of opinion that the use of the ropeway or of any specified part thereof may be attended with danger to the public, he shall state that opinion, together with the grounds therefor, to the [State Government]¹⁶ and the [State Government]¹⁶ may thereupon order that, for reasons to be set forth in the order, the aerial ropeway, or the part thereof so specified, be closed to all traffic or to any special class of traffic. In cases of extreme urgency the Inspector may order the suspensions of the working of the ropeway or any part thereof which he considers necessary, pending the final orders of the [State Government]¹⁶.

(2) When under sub-section (1) an aerial ropeway or any part thereof has been closed to any traffic it shall not be re-opened to such traffic until it has been inspected and its re-opening sanctioned in accordance with the provisions of this Act.

DISCONTINUANCE OF AERIAL ROPEWAYS

23. Cessation of powers of promoter on discontinuance of aerial ropeway.—If, at any time after the opening of an aerial ropeway, it is proved to the satisfaction of the [State Government]¹⁶ that the promoter has discontinued the working of the ropeway or of any part thereof, without a reason sufficient, in the opinion of the [State Government]¹⁶ to warrant such discontinuance, the [State Government]¹⁶ may, if it thinks fit, declare that the powers of the promoter in respect of such aerial ropeway or part thereof shall, from such date as it may determine, be at an end; and thereupon the said powers shall cease and determine.

Explanation.—The working of a ropeway shall be deemed to have been discontinued if it has ceased for a period to be determined in the order published under Section 7.

24. Power of State Government to remove aerial ropeway on cessation of promoter's powers.—(1) When a declaration has been

15. Subs. by the A. O. 1950 for [Prov. Govt.] which had been subs. by the A. O. 1937 for [L. G.].

16. Subs. for [Gazette] by the A. O. 1937.

made by the [State Government]¹⁷ under Section 23 in respect of any aerial ropeway or of any part thereof, an officer appointed in that behalf by the [State Government]¹⁷ may, at any time after the expiration of two months from the date determined as aforesaid, remove such aerial ropeway or part thereof, as the case may be ; and the promoter shall pay to the officer so appointed such costs of removal as shall be certified by that officer to have been incurred by him.

(2) If the promoter fails to pay the amount of costs so certified within one month after the delivery to him of the certificate or of a copy thereof such officer may, either by public auction or private sale and without any previous notice to the promoter and without prejudice to any other remedy which he may have for the recovery of the said amount, sell and dispose of the materials of the aerial ropeway or part thereof so removed ; and may, out of the proceeds of the sale, pay and reimburse himself the amount of costs certified as aforesaid and of costs of the sale ; and shall pay over the residue (if any) of such proceeds to the promoter.

INABILITY OR INSOLVENCY OF PROMOTER

25. Proceedings in case of inability or insolvency of promoter.—(1) If, at any time after the opening of an aerial ropeway, it appears to the [State Government]¹⁷ that the promoter is insolvent or is unable to maintain the ropeway or to work the same with advantage to the public, or at all, the [State Government]¹⁷ may, after considering any statement which the promoter may desire to make, and after such inquiry as it deems necessary, declare that the powers of the promoter, in respect of such aerial ropeway, shall, at the expiration of six months from the date of such declaration, be at an end ; and thereupon the said powers shall, at the expiration of that period, cease and determine.

(2) At any time after the expiration of the said six months an officer, appointed by the [State Government]¹⁷ in that behalf, may remove the aerial ropeway in the same manner and subject to the same provisions as to the payment of costs and to the same remedy for the recovery thereof in every respect as in cases of removal under Section 23.

BYE-LAWS

26. Power of promoter to make bye-laws.—(1) A promoter shall, subject to the provisions of sub-section (3), make bye-laws consistent with this Act—

- (a) for regulating the speed at which carriers are to be moved or propelled :
- (b) for declaring what shall be deemed to be dangerous or offensive goods and for regulating the carriage of such goods ;
- (c) for regulating the maximum number of passengers and animals and the maximum weight of goods to be carried in each carrier ;
- (d) for regulating the use of steam power or any other mechanical power or electrical power on the aerial ropeway ;

17. Subs. by the A. O. 1950 for [Provl. Govt.] which had been subs. by the A. O. 1937 for [L. G.].

- (e) for regulating the conduct of the promoter's servants ;
- (f) for regulating the terms and conditions on which the promoter will warehouse or retain goods at any station on behalf of the consignee or owner of such goods ; and
- (g) generally for regulating the travelling upon, and the use, working and management of the aerial ropeway.

(2) Such bye-laws may provide that any person who contravenes the provisions of any of them shall be liable to fine which may extend to any sum not exceeding fifty rupees, and that in the case of a breach of a bye law made under clause (c) of sub-section (1) the promoter's servant responsible for the same shall forfeit a sum not exceeding one month's pay, which sum may be deducted by the promoter from his pay.

(3) A bye-law made under this section shall not take effect until it has been confirmed by the [State Government]¹⁸ and published in the [official Gazette]¹⁹ :

Provided that no such bye-law shall be so confirmed until it has been previously published by the promoter in such manner as may be prescribed.

SUPPLEMENTARY PROVISIONS

27. Returns.—A promoter shall in respect of the aerial ropeway submit to the [State Government]¹⁸ returns of capital and revenue expenditure, receipts, and traffic at such intervals and in such forms as may be prescribed.

28. Protection of roads, railways, tramways and waterways.—No promoter shall, in the course of the construction, repair, working or management of an aerial ropeway, cause any permanent injury to any public road, railway, tramway, or waterway or obstruct or interfere with, otherwise than temporarily, as may be necessary, the traffic on any public road, railway, tramway or waterway.

29. Acquisition of land on behalf of a promoter.—The [State Government]¹⁸ may, if it thinks fit, subject to the provisions of this Act, on the application of any promoter desirous of obtaining any land for the purpose of constructing, working or managing an aerial ropeway, acquire on his behalf such land under the provisions of part VII of the Land Acquisition Act, 1894, whether the said promoter is or is not a company as defined in the Land Acquisition Act.

RULES BY STATE GOVERNMENT

30. Power of State Government to make rules.—(1) The [State Government]¹⁸ may after previous publication, make rules to carry out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may prescribe—

- a) the power and duties of an Inspector appointed under Section 11 ;

18. Subs. by the A.O. 1950 for [Provi.
Govt.] which had been subs.. by
the A. O. 1937 for [L. G.] .

19. Subs. for [Gazette] by the A. O.
1937.

- (b) the duties of the promoter's servants, police officers, and magistrates on the occurrence of an accident;
- (c) the maximum and minimum rates which a promoter may fix under Section 19;
- (d) the standard dimensions and specifications to which the aerial ropeway is to conform;
- (e) the manner of previous publication of bye-laws made under Section 26;
- (f) the intervals at which a promoter shall submit returns under Section 27 and the forms in which such returns shall be submitted;
- (g) the manner in which notices under this Act shall be served;
- (h) the manner in which and the conditions under which the through booking of goods may be permitted between an aerial ropeway and a railway, tramway or another aerial ropeway; and
- (i) the safe and efficient working of aerial ropeways.

(3) All rules made under this section shall be published in the [official Gazette]²⁰.

OFFENCES, PENALTIES AND ARREST

31. Failure of promoter to comply with Act.—If a promoter—

- (a) constructs or maintains an aerial ropeway otherwise than in accordance with the terms of an order made under Section 7; or
- (b) opens an aerial ropeway or permits it to be opened in contravention of any of the provisions of Section 10; or
- (c) fails to comply with the provisions of Section 13; or
- (d) fails to pay within a reasonable time any compensation awarded by the Collector under Sections 15, 16 or 17 or by the District Judge under Section 18; or
- (e) contravenes any of the provisions of Section 20; or
- (f) fails to send notice of any accident as required by Section 21; or
- (g) fails to close an aerial ropeway in accordance with an order passed under sub-section (1) of Section 22, or re-opens any aerial ropeway in contravention of sub-section (2) of that section; or
- (h) continues to exercise the powers of a promoter in respect of any aerial ropeway in contravention of the provisions of Section 23 or Section 25; or
- (i) fails to comply with the provisions of Section 26 or Section 27; or
- (j) contravenes any of the provisions of Section 28; or
- (k) contravenes the provisions of any rule made under Section 30;

20. Subs. for [Gazette] by the A. O. 1937.

he shall (without prejudice to the enforcement of specific performance of the requirements of this Act, or of any other remedy which may be obtained against him) be punishable with fine which may extend to two hundred rupees, and in the case of a continuing offence, to a further fine which may extend to fifty rupees for every day after the date of the first conviction during which the offender is proved to have persisted in the offence.

32. Unlawfully obstructing promoter's servant in discharge of his duty. If a person wilfully obstructs or impedes any servant of the promoter in the discharge of his duty, he shall be punishable with fine which may extend to one hundred rupees.

33. Unlawfully interfering with aerial ropeway.—If any person without lawful excuse, the burden of proving which shall lie upon him, wilfully does any of the following things, namely.—

- (a) interferes with, removes or alters any part of an aerial ropeway or of the works connected therewith;
- (b) does anything in such a manner as to obstruct any carrier travelling on an aerial ropeway;
- (c) attempts to do or abets, within the meaning of the Indian Penal Code, the doing of anything mentioned in clause (a) or clause (b);

he shall (without prejudice to any other remedy which may be obtained against him in a Civil Court) be punishable with fine which may extend to two hundred rupees.

34. Punishment for acts or attempts tending to endanger safety of persons travelling or being upon aerial ropeway.—If any person does anything mentioned in clause (a), clause (b) or clause (c) of Section 33 or does, attempts to do, or abets, within the meaning of the Indian Penal Code, the doing of any other act or thing in relation to an aerial ropeway with intent or with knowledge that he is likely to endanger the safety of any person travelling or being upon the aerial ropeway, he shall be punishable with imprisonment for a term which may extend to fourteen years.

35. Arrest for offences against certain sections, and procedure thereupon.—(1) If any person commits any offence under Section 33 which obstructs the working of an aerial ropeway or commits any offence punishable with imprisonment under Section 34, he may be arrested without warrant or other written authority by any servant of the promoter, or by any police officer or by any other person whom such servant or officer may call to his aid.

(2) A person so arrested shall, with the least possible delay, be taken before a magistrate having authority to try him or to commit him for trial.

36. Notification of claims to refunds of overcharges and to compensation for losses.—A person shall not be entitled to a refund of an overcharge in respect of animals or goods carried by an aerial ropeway or to compensation for the loss, destruction or deterioration of animals or goods delivered to be so carried, unless his claim to the refund or compensation has been preferred in writing by him or on his behalf to the promoter within six months from the date of the delivery of the animals or goods for carriage by the ropeway.

Rules Under U. P. Aerial Ropeways Act, 1922

Published in U. P. Gazette, dated June 27, 1931, Part I at pages 672 to 674 under No. 499-R. C. 166 1930, dated 19th June, 1931.

[RULES MADE UNDER SECTION 30 OF THE ACT]

Survey, Construction, Maintenance and Working

1. Intending promoters of an aerial ropeway shall submit the following maps, drawings, detailed information, specifications and estimates when required to do so under Section 5 of the Act:

- (a) A map of the alignment on a scale of 1 in 1,000 showing in red the proposed alignment and details with 5' feet on either side of the alignment specifically showing all over-head cables, roads, dwelling houses, canals, public embankments and other structures. The areas proposed to be acquired shall also be shown on the map.
- (b) A profile of the ground plotted to be a natural scale of 1 in 1,000 showing loading, unloading, tension, angle, section and power stations, position and height of the trestles with the sag of the loaded rope and the clearance, in figures, of any permanent object proposed to be crossed by the ropeway and the position of protection bridges.
- (c) A skeleton drawing of stations and a drawing of a typical trestle showing buckets and rope supports to a scale of not less than 1 in 130, dimensioned drawings of the buckets or carriers from the point of their suspension in the boxhead, and their cubic capacity. When construction has been decided upon, the complete dimensioned working plans shall be placed before Government for final approval.
- (d) A statement showing :—
 - (1) the type of ropeway,
 - (2) whether the load will be carried one way or both ways,
 - (3) length of the ropeway with the length of each section if not in one length,
 - (4) difference of altitude of terminals and whether such difference is for or against the loads to be carried for each section.
 - (5) vertical height between the rope and protection bridges at road and railway crossing,
 - (6) average or maximum verticle height of the rope above inhabited areas,
 - (7) statement showing inhabited areas crossed and method of affording protection from falling buckets or contents thereof,
 - (8) material to be carried,
 - (9) quantity per hour,
 - (10) individual bucket loads,
 - (11) weight of bucket and boxhead,

- (12) cubic capacity of buckets,
- (13) speed of rope,
- (14) driving pull at rope,
- (15) size of rope or ropes,
- (16) construction of rope,
- (17) actual breaking strength of rope or ropes,
- (18) greatest tension on line,
- (19) lowest factor of safety for the rope.
- (20) size of tension ropes,
- (21) actual breaking strength of tension rope,
- (22) tension in tension ropes,
- (23) gauge of line,
- (24) diametre of turn-back sheaves,
- (25) clearance between buckets and trestles,
- (26) maximum designed stress in structures and condition governing same,
- (27) ultimate resistance of steel employed,
- (28) maximum stress in main shaft bearings,
- (29) unit pressure in main shaft bearings,
- (30) wind pressure on ropes and buckets and on structures,
- (31) weight of foundations for main anchorages with calculations and sketch giving the overturning and resisting moment of the foundations, and
- (32) diametre and maximum unit pressure on trestle sheaves, or in the case of a bi-cable ropeway, on the supporting saddles.

(e) An accurate estimate of the cost of construction and statements of estimated working expenses and profits and of maximum and minimum rates which it is proposed to charge.

(f) Dimensioned drawings in triplicate of all protection bridges, with stress diagrams and calculations taking impact of falling buckets into account.

2. The minimum clearance of a ropeway from the ground except within station limits shall be 12 feet, and the clearances over navigable rivers canals and railways will be determined in each case in consultation with the authorities in charge of such rivers, canals and railways.

3. The clearance over public roads having a width of not less than 10 feet shall not be less than 16 feet.

4. No ropeway shall be constructed unless every part excepting the anchorages of foundations has a factor of safety of at least 4 under the maximum conditions. For foundation anchorages it shall be sufficient if the moment of resistance of the foundation exceeds the overturning moments by 50 per cent. The factor of safety of 4 shall be obtained in the case of the rope by dividing the actual breaking load of the rope by the maximum direct tension to which it will be subjected.

5. Station gear, trestle sheaves and wire ropes shall be so designed and placed that lubrication can be performed safely whilst the ropeway is in motion.

6. All carriers shall be provided with appliances which will prevent them from discharging their contents, except at points where they are intended to discharge them.

7. The promoter shall install a method of signalling which will enable the ropeway to be stopped from any station.

Returns

8. Returns prescribed under Section 27 of the Act shall be made up to the thirty first day of December or the thirty first day of March, at the option of the promoter or to such other date as the [State] Government may approve, and shall be submitted within a period of six months from each date as aforesaid or such extended period as the [State] Government may authorize on being satisfied that the time allowed is insufficient owing to any cause not within the control of the promoter.

Notices

9. Notices under the Act shall be served by registered post.

Bye-Laws

10. One month before any bye-law made by the promoter under Section 26 of the Act is confirmed by the [State] Government and published in the Gazette, notice of the making of the same and a copy of such bye-law shall be published by advertisement once at least in each of two successive weeks in some one and the same newspaper published in the district in which the ropeway operates; or if there be no such newspaper then in some one and the same newspaper published in the [State]. The advertisement shall be inserted in the official Gazette.

Duties of Inspector

11. The inspector appointed under Section 11 of the Act shall be the technical adviser to the [State] Government, and his duty shall be to make a general inspection of the ropeways at least once a year, to make such other inspections as may from time to time be necessary and to advise Government regarding works of public safety and convenience and the general working of the ropeways and such other matters as may be referred to him.

Accidents

12. The following shall be deemed to be an accident within the meaning of Section 21 of the Act :—

- (1) derailment of a carrier beyond the station limits, which include the distance between the station and the first trestle on either side of a station;
- (2) displacement of carrier ropes from the trestle sheaves or saddle;
- (3) damage to trestles;
- (4) a carrier striking a trestle or other permanent object; and
- (5) accidental tipping of buckets along the line.

13. Notice of such accidents shall be sent by letter to the [State]

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Government and to the inspector, and shall contain the following particulars, namely :—

- (a) Mileage, or station, or both at which the accident occurred ;
- (b) Time and date of the accident ;
- (c) nature of the accident ;
- (d) number of people killed or injured as far as is known ;
- (e) cause of the accident, as far as is known ;
- (f) probable detention to traffic.

14. When any accident attended with loss of human life or with grievous hurt, as defined in the Indian Penal Code or with serious injury to property, occurs on the ropeway, the promoter's servant nearest to the place at which the accident occurred shall give notice of the accident by telegram to the local Government, the Inspector the District Magistrate, and the Superintendent of Police of the district in which the accident occurred, to the officer incharge of the police station within the local limits of which it has occurred and to the nearest dispensary. It shall be the duty of the promoter's servants to afford medical aid to the sufferers and to see that they are properly handled and carefully attended to till they are removed to their houses or handed over to the care of their relatives or friends.

15. Accidents of the nature described in Section 12 of the Act shall be jointly inquired into by a committee consisting of the promoter's servants, the Inspector, a Magistrate, and police officer, and a report shall be submitted to Government by such committee. When an inquiry is being made the promoter shall produce before the committee all his servants whose evidence is likely to be required. Whenever the report of the committee or of the Inspector points to the necessity for or suggests a change in any of the rules or in the system of working the promoter shall, when acknowledging the report, intimate the action which has been taken, or which it is proposed to take, to prevent the recurrence of similar accidents.

Duties of Magistrates

16. Whenever an accident of the nature described in Section 12 of the Act has occurred in the course of working of an aerial ropeway the District Magistrate, or any other magistrate who may be appointed in this behalf by the [State] Government, may direct an investigation into the cause which led to the accident to be made by a subordinate Magistrate or by the Police. When it is decided to make an inquiry the Magistrate or Police officer so deputed shall proceed to the accident and conduct the inquiry there, and shall at once advise the promoter and the Inspector of the date and hour at which the inquiry will commence. The Magistrate or Police officer may summon any of the promoter's servants and any other person whose presence he may think necessary, and, after taking the evidence and completing the inquiry shall forward a copy of the report to the promoter and to the local Government.

Duties of Police Officers

17. A police officer may make an investigation into the causes which led to any accident occurring in the course of the working of an aerial ropeway as contemplated in Section 21 of the Act, provided no such investigation is made when an inquiry has been commenced or ordered by the magistrate.

THE UNITED PROVINCES AGRICULTURISTS' RELIEF ACT, 1934

(U. P. Act No. XXVII of 1934 as amended upto date)

CONTENTS

Sections

- CHAPTER I
Preliminary
 1. Short title, extent and commencement.
 2. Interpretation clauses
- CHAPTER II
Suits against Agriculturists
 3. Fixing of instalments at the time of passing of decree.
 4. Future interest.
 5. Power to fix instalments after the passing of decrees.
 6. Limit to the execution of decree by sale of agricultural produce.
 7. Forum of suits against agriculturists.
 8. Change in the status of an agriculturist.
- CHAPTER III
Mortgages and their Redemption
 9. Form of possessory mortgage.
 10. Jurisdiction of Collector under this chapter.
 11. Ejectment of mortgagee remaining in possession after term.
 12. Application for redemption.
 13. Mortgagee to be summoned.
 14. Procedure when mortgagee accepts deposit.
 15. Procedure when applicant is absent.
 16. General procedure and procedure in contentious cases.
 17. Cessation of interest.
 18. After redemption the mortgagor to be put in possession, if necessary.
 19. Return of deposit.
 20. Deposit not to be attached.
 21. Terms "mortgagor" and "mortgagee" to include their successors.
 22. Investment of powers on Assistant Collectors and transfer of proceedings.
 23. Appeals.
 24. When application can be filed under this chapter.
 25. Bar of suit.
 26. Limitation and procedure.
 27. Applicability of the Code of Civil Procedure to proceedings under this chapter.
- CHAPTER IV
Rates of Interest
 28. Rate of interest on loans taken after the passing of this Act above which the debtor is not liable to pay.

Sections

- 29. Benefit for prompt payment of loans taken after the passing of this Act.
- 30. Rate of interest on undecreed loans taken before this Act came into force for the period after January 1, 1930.
- 31. Rate of interest on loans taken after this Act came into force after the aggregate of interest has reached 100 per cent, of the sum borrowed.
- CHAPTER V
Maintenance of Accounts
 32. Duty of creditor to maintain and furnish accounts.
 33. Suit by debtor for account of money lent.
 34. Penalty for non-compliance with the provisions of Section 32.
 35. Penalty for entering in books of accounts a sum larger than that actually lent and for not giving receipts.
 36. Saving in case of previous loans
- CHAPTER VI
Miscellaneous
 37. A loan taken in kind may be paid by the debtor at his option in the same or another kind.
 38. Deposit of whole or part of a debt in Court.
 39. Preparation of a document for every loan and the supply of a copy to the debtor.
 40. Stamp duty, etc. on certain bonds by agriculturists.
 41. Power of State Government to make rules.
 42. Exclusion of jurisdiction of civil courts.

SCHEDULES

- I.—The classes mentioned in Section 2 (2) (h).
- II.—Percentage rates mentioned in Section 28 by which the prevailing rate of interest should exceed the percentage rate at which the State Government borrow from the Central Government.
- III.—Rates of interest for Section 30.
- IV.—Rates of interest mentioned in Section 31.
- V.—Scale mentioned in Section 40.
- VI.—Schedule of court fee payable on a plaint under Section 33.

THE [UTTAR PRADESH] AGRICULTURISTS' RELIEF ACT, 1934

As modified upto U. P. Act XLII of 1948 and adapted.

(Received the assent of the Governor on January 15, 1935, and of the Governor-General on April 10, 1935, and was published under Section 81 of the Government of India Act on April 27, 1935.)

An Act to make provision for the relief of agriculturists from indebtedness;

Whereas it is expedient to make provision for the relief of agriculturists from indebtedness;

And whereas the previous sanction of the Governor-General under Section 80-A (3) (c) of the Government of India Act has been obtained to the passing of this Act;

It is hereby enacted as follows:—

Prefatory Note.—The following extract from the Statement of Objects and Reasons may be usefully noticed:—

"The Bill is intended to give relief only to agriculturists who pay a land revenue or rent not exceeding Rs. 200/- etc., as defined in the definition of 'agriculturist' in Section 2 (1) of the Bill and to agriculturist labourers living outside the boundary of any municipality, notified area or town area who follow such occupation as those of cowherds or goatherds mentioned in the schedule, with the proviso that no person shall be considered to be an agriculturist if he is assessed to income-tax. The limit of Rs. 20/- has been provisionally adopted as the result of discussions in the various Committees which have sat to consider this subject; it will, however, remain for subsequent decision in the light of further discussion in the Legislative Council whether a wider scope should not be given to the provisions embodied in the Bill.

2. The present economic slump has seriously aggravated the indebtedness of the agriculturists of limited means, whose powers of resistance have been further weakened by a succession of indifferent harvests. The position has been made still worse for want of a legal process by which agriculturist debtors can get their accounts settled or make payment of a portion of their debts. Owing to illiteracy they do not know how their accounts stand as there is no process of law by which they can get a regular account from their creditors. When they are able to pay their mortgage debts they often cannot without recourse to lengthy litigation redeem their property.

3. The object of the present Bill is to provide facilities to agriculturists in these and other matters, and in particular—

1. to make provision for a legal process under which an agriculturist debtor can apply to a civil court to get his account settled and to fix instalments for the payment of any sum due;
2. to enable a debtor to deposit in court a sum of money in discharge of his debt for payment of any sum due;
3. to limit the sale of agricultural produce in execution of decrees to four years;
4. to limit ususfructuary mortgages to a period not exceeding 20 years;
5. to enable occupancy or ex-proprietary tenants to mortgage their holdings to co-operative societies with a view to their getting long-term credit;
6. to enable an agriculturist mortgagor to redeem his land during the currency of the mortgage on certain conditions;
7. to provide for a summary method of redemption;
8. to enable debtors to receive a statement of account from their creditors and to compel the creditors to maintain their accounts in a regular manner; and
9. to make it a penal offence for a creditor to enter in his books a sum larger than that actually lent."

Vide U. P. Gazette, dated May 3, 1933, part VIII, p. 69—70; for the Report of Select Committee—see *U. P. Gazette, Extraordinary*, dated November 23, 1933, pp. 1 to 104; for Proceedings in Council—see *Council Proceedings*, Vol. LIX, pp. 374—404, 429—431 and 434—439 respectively, Vol. LX, pp. 336—391, 398—445, 460—495, 498—537, 562—590, 618—620, 641—669, respectively and Vol. LXV, pp. 266—391.

Repeal-effect.—The U. P. Agriculturists' Relief Act has been repealed by Section 339, read with Schedule III, List I of the U. P. Zamindari Abolition Act, and it does not apply in areas which have vested in the State. It, however, still applies in such areas which have not vested in the State. It has not been repealed in its entirety and with respect to any area with regard to which no notification under Section 4 has been issued the Act still remains in force¹. The repeal would also not affect the pending revisions against a decree passed under Section 12, U. P. Agriculturists' Relief Act².

CHAPTER I

Preliminary

1. Short title, extent and commencement.—(1) This Act may be called the [Uttar Pradesh] Agriculturists' Relief Act, 1934.

(2) It extends to the whole of the [Uttar Pradesh]:

Provided that the provisions of Chapter III shall not apply to any mortgage to which the provisions of the Bundelkhand Land Alienation Act, 1903, are applicable.

(3) The [State Government] may, after obtaining the approval of [both Houses of the State Legislature], by notification in the [Official Gazette] direct that all or any of the provisions of the Act shall not apply to any area which it may specify in the notification.

(4) It shall come into force on such date as the [State Government] may by notification direct.

Legislative changes:—The words [Uttar Pradesh], [State Govt.] and [both Houses of the State Legislature] in sub-sections (1), (2), (3), and (4) were substituted for the words [United Provinces], [Provincial Govt.] and [both chambers of the Provincial Legislature] by A. O. 1950 which were substituted by A. O. 1937 for the words [Local Govt.] and [the Legislative Council], throughout the Act. The words [Official Gazette] were substituted for the word [Gazette] by A. O. 1937 throughout the Act.

Date of Enforcement.—The Act came into force on 30th April, 1935—*Vide Notification No. 323 Revenue Department published in Part VIII of the [Uttar Pradesh] Gazette*, dated 27th April, 1935.

Extent.—It extends to the whole of the [Uttar Pradesh] with this exception that the provisions of Chapter III shall not apply to any mortgage to which the provisions of the Bundelkhand Land Alienation Act II of 1903 are applicable. The State Government is, however, empowered under Section 1 (3) to exclude any area from the operation of this Act, but so far there has been no notification.

This Act now stands repealed, for those areas as to which U. P. Zamindari Abolition and Land Reforms Act, 1950 has been applied vide notifications issued under S. 339 of the said Act.

Bundelkhand Land Alienation Act.—The Act, as it stands is known as the Alienation of Land Act II of 1903. This was amended by the Bundelkhand Alienation of Land (Amendment) Act IV of 1915, and after this amendment the Act now applies to the following areas:—

- (1) District of Banda.
- (2) District of Hamirpur.
- (3) District of Jhansi.
- (4) District of Jalaun.

1. *Pandit Gopi Nath v. Pandit Bhanu Shankar Yajnik*, 1954 ALJ 336.
2. *Ibid.*

- (5) The following sub-divisions of the Allahabad District :—
 - (a) Meja.
 - (b) Bera.
 - (c) Karchana.
- (6) The following parganas of the Mirzapur District :—
 - (a) Dudi.
 - (b) Bijaigarh.
 - (c) Agori.
 - (d) Singrauli.
- (7) Trans-Jamuna position of the Etawah District.

Mortgages under the Bundelkhand Alienation of Land Act.—Chapter III of the U. P. Agriculturists' Relief Act has no application to mortgages made under the provisions of Sections 6 to 10 of the Bundelkhand Alienation of Land Act II of 1963. Sections 6 to 9 deal with mortgages made by a member of an Agricultural Tribe, while Section 10 applies to all proprietors in Bundelkhand, whether members of Agricultural Tribe or not³. The following have been declared to be Agricultural Tribes under the Act :—

- (1) Thakurs
 - (2) Brahmans (except Marwari Brahmans)
 - (3) Kurmis
 - (4) Ahirs
 - (5) Bhuihars
 - (6) Melis
 - (7) Kachis
 - (8) Lods
 - (9) Gadarias
 - (10) Murais
 - (11) Musalman Rajputs
 - (12) Gujars of Jalaun District—Notification No. 112/I—779-F, dated 12th January, 1904.
 - (13) Gonds of Villages :—
 - (a) Lakhanpur
 - (b) Gonthra
 - (c) Papro
 - (14) The inhabitants of those portions of Etawah and Mirzapur Districts to which the Act applies—Notification No. 2443—I—568, dated 6th December, 1915.
- Notification No. 1971/
I—779-F, dated 20th
June, 1903.

Note.—The term Brahmin includes Brahma Bhats⁴. Hindu Ghosis of Jalaun district are members of the Agricultural Tribe within the meaning of the Act⁵. Chaubeys of Godhra Kalan are not agriculturists⁶.

Scope.—The Act is a special local law and must be so administered. Care should be taken to limit its scope to the extent legitimately warranted by the language. The plea of multiplicity of suit cannot be made a ground for extending its scope⁷. The U. P. Agriculturists' Relief Act affect vested rights, but it cannot have any effect on the rights of the mortgagees, who have ceased to be mortgagees before the commencement of the Act: and have become owners of the property⁸.

2. Interpretation clauses

In this Act, unless there is anything repugnant in the subject or context —

(1) “Agricultural calamity” means, with reference to a particular debtor, a calamity other than a slump in prices on account of which—

(a) if the debtor is a revenue-paying landlord, or an under-proprietor in Oudh holding a sub-settlement, there has been a suspension or remission of the revenue of any of his holdings; or

3. 1935 RD 322=SD 3 of 1935.

4. *Ram Prasad v. Gore Lal*, 49 A 887; 25 A L J 678.

5. *Kalka Prasad v. Raj Rani*, 41 A 294; 17 A L J 294.

6. 1930 A 856.

7. *Jagjit Singh v. Sankatha Singh*, 1950 A 675 (F. B.).

8. *Sita Ram Singh v. Gaya Prasad*, 1953 A 620.

- (b) if the debtor is a landlord, holding land free of revenue, there would have been a suspension or remission of the revenue of any of his holdings if revenue had been payable therefor ; or
- (c) if the debtor is a thekadar of land, there has been a suspension or remission of the rent of any holding payable to him ; or
- (d) if the debtor is a tenant of land or a person other than a thekadar or an under proprietor in Oudh holding a sub-settlement and paying rent for his land, there has been a suspension or remission of the rent of any holding payable by him.

Agricultural calamity.—This phrase has been used in Section 6 only and as such this definition is applicable to that section alone. The chief criterion to determine "Agricultural calamity" with reference to any particular debtor is that there should be a suspension or remission of revenue or rent of any of his holdings, otherwise than due to a slump in prices.

(2) "Agriculturist" means, in all sections of the Act where the term is used—

- (a) a person who, in districts not subject to the Benares Permanent Settlement Regulation, 1795, pays land revenue not exceeding Rs. 1,000 per annum ; or
- (b) a person who, in districts subject to the Benares Permanent Settlement Regulation, 1795, pays a local rate under Section 109 of the District Board Act, 1922, not exceeding Rs. 120 per annum ; or
- (c) a person holding land free of revenue, who pays a local rate under Section 109 of the District Boards Act, 1922, not exceeding Rs. 120 per annum ; or
- (d) in Oudh, an under-proprietor holding a sub-settlement of land the revenue of which does not exceed Rs. 1,000 per annum ; or
- (e) a thekadar who holds a theka of land the revenue of which does not exceed Rs. 1,000 per annum ; or
- (f) a person other than a thekadar or an under-proprietor in Oudh holding a sub-settlement, who pays rent for agricultural land not exceeding Rs. 500 per annum ; or
- (g) a person holding land free of rent, the area of which does not exceed 80 acres ; or
- (h) a person ordinarily living outside the limits of any municipality who belongs to any of the classes of persons mentioned in schedule I :

Provided that in Section 2 (10) (a), 3, 4, 5, 8, and Chapters IV and V an agriculturist means also a person who would belong to a class of persons mentioned in parts (a) to (g) of this sub-section, if the limits of land revenue, local rates, rent and area mentioned in these parts were omitted :

Provided also that no person shall be deemed to be an agriculturist if he is assessed to income-tax, which, if he belongs to any of the classes (a) to (e) above, exceeds the local rate payable on the land which he holds, or, if he belongs to class (f) above, exceeds 5 per cent. of his rent, or, if he belongs to class (g) above, exceeds Rs. 25 :--

Provided further that if a non-agriculturist joins with an agriculturist in any transaction of loan, save for the purpose of adding his name as security, the agriculturist shall not be considered as such for the purpose of that transaction.

Explanation I--In this sub-section "revenue" and "rent" mean revenue and rent payable irrespective of the remission that may be granted for the slump in prices or for agricultural calamities.

Explanation II--In the case of members of a joint Hindu family or joint owners or joint tenants, each member or owner or tenant shall be considered to be an agriculturist for the purposes of Chapter II (except Sections 3, 4, 5 and 8), III and VI, whose share or interest in revenue, local rate or rent or the rent-free land, as the case may be, does not respectively exceed the aforesaid limits.

Explanation III--In Oudh an under-proprietor of specific plots not holding a sub-settlement and paying rent not exceeding Rs. 500 per annum is an agriculturist.

Explanation IV--The word "rent" in this sub-section includes, in cases where rent is payable in kind, the money equivalent thereof recorded in the *khatauni* of the previous years.

Explanation V--The word "rent" in this sub-section shall not include *zaid mutalba* or any amount paid in excess of the rent legally payable.

Explanation VI--When a person pays both rent and revenue, he shall not be deemed to be an agriculturist for the purposes of Chapter II (except Sections 3, 4, 5, and 8), III and VI, if the total of the rent and revenue annually payable by him exceeds Rs. 1,000/- or if he is excluded from the definition of agriculturist under any of the clause (a) to (g).

Explanation VII--When a person, holding land in districts subject to the Benares Permanent Settlement Regulation, 1795, or holding land free of revenue, pays both rent and local rate, he shall not be deemed to be an agriculturist if the total of the rent and local rate annually payable by him exceeds Rs. 500.

Illustrations—(i) A person who pays Rs. 800 as revenue and Rs. 400 as rent is not an agriculturist as the total of rent and revenue exceeds the limit of Rs. 1,000.

(ii) A person pays Rs. 200 as revenue and Rs. 600 as rent. He comes under clause (a) but not under clause (f); he is not therefore an agriculturist.

Agriculturist—meaning of.--The definition of the term "Agriculturist" as

given in the Act is very complicated. Broadly speaking they can be divided under two heads :—

- (1) Agriculturists on whom limitations of land Revenue, local rates, rent and areas have been imposed.
- (2) Agriculturists who have no such limitations.

The difference between the two is that the first class of agriculturists are entitled to the benefits of the entire Act, while the second class of agriculturists are entitled to the benefits of Section 2 (10) (a), 3, 4, 5, 8 and Chapters IV and V only. It may, however, be noted that the definition is not confined only to persons actually engaged in the avocation of agriculture⁹. The definition is comprehensive enough to include landlords, under-proprietors, thekadars, rent-free holders, tenants and agricultural labourers as well. Section 2 (4) applies equally both to Oudh and Agra provinces. A person not paying any rent or revenue cannot be said to be an Agriculturist within the meaning of Section 2(d)¹⁰. The word "pays" shows that the liability for payment should be in presenti. A person who holds vested remainder in the property and who has not yet come in possession of the property cannot be said to be an agriculturist.¹¹ A usufructuary mortgagee from a fixed rate tenant is an agriculturist.¹²

Mortgagees in possession paying local rates or land revenue as such for the mortgaged land are not agriculturists, as he pays only as an agent to the mortgagor, who continues to be an agriculturist.¹³

Mutawalli if "Agriculturist".—A person paying Land Revenue as Mutawalli is an "Agriculturist" in case he has beneficial interest under the *waqf*, otherwise not, because in the latter case he is merely a trustee of other persons.¹⁴

Trustee if "Agriculturist".—The word "person" as used in the definition has not been defined in the Act. The definition of that term contained in Section 4 (33) of the U. P. General Clauses Act (I of 1904) includes any company or association or body of individuals, whether incorporated or not, and as such it is wide enough to include a body of persons like the trustees¹⁵.

Banaras Permanent Settlement Regulation, I of 1795.—This is a Regulation for fixing in perpetuity revenue assessed on the lands in the Province of Banaras for the more general restoration of the ancient Zamindars.

Local Rate—It usually means what is popularly called *abwab*, cesses are not the same thing as local rates. In Oudh the local rate is five per cent. of the annual value which is double the land revenue under Section 2 of the Local Rates Act except in the Districts of Lucknow, Rae Bareli and Bara Banki, that is to say, it is 10 per cent. of the land revenue¹⁶. For distinction between "local rates" and "cesses" see *Lachman Singh v. Dhanesh Singh*, 1936 O W N 35. Chaukidari and road cess do not form part of local rate¹⁷.

Local rates were imposed by Section 3 of the Uttar Pradesh Local Rates Act, 1914. This section has now been substituted by Section 109 of the Uttar Pradesh District Boards Act, 1922.

9. *Bhawani Shanker v. Khurshed Jehan*, 1937 O W N 740=1937 O 369.
10. *Mushir Ali v. Ahmad Said Khan*, 1943 A L W 207. See also *Gokal Singh v. Raj Narain*, 1944 R D 58; 1950 A 433.
11. *Seth Roop Kishore Tandon v. Seth Brij Kishore Tandon*, 1953 A W R 706=1954 A 117 (H. C.)
12. *Bandhu Lal v. Bhagwandas*, 1946 A L J 367.
13. *Lakshi Lal v. Joshi Girdharji*, 1950 A 49.
14. *Mohammad Musa Khan v. Sri Thakur Gopalji Maharaj*, 1937 A L J 178=1937 A 314=1937 A W R 167 followed in *Dwarka Prasad v. Mohd. Tagi Husain*, 1938 O W N 573; 1938 R D 584; 1938 Oudh 154.
15. *Bhawani Shankar v. Khurshed Jehan*, 1937 O W N 740 (F B)=1937 O 369=1937 R D 34 1 70 I C 742.
16. *Sheo Ratan v. D C Fyzabad* 1939 R D 48=1939 O W N 38. See also *Lachman Singh v. Dhanesh Singh* 1936 O W N 35.
17. *Mudri Lal v. Ram Saran*, 1944 A W R 222 (Rev.).

By Notification No. 350/I—243, dated 29th January, 1915 local rates in Oudh has been fixed (*vide* District Board Manual, Vol. I, page 187).

Under-proprietor—meaning.—The definition of the term has been given in Section 2 (14) of the Act. It has the same meaning as given in the Oudh Rent Act and means any person possessing a heritable and transferable right to property in land for which he is liable or but for a contract or decree would be liable to pay rent. The same definition has been given in Section 4 (15) of the Uttar Pradesh Land Revenue Act. Under-proprietors may be classified as follows¹⁸:

- (1) Those with whom sub-settlement was made under the Oudh Sub-settlement Act.
- (2) Holders of Didari or Dildari tenures. These tenures arose on voluntary or involuntary transfers of land, by the purchaser assigning to the seller a portion of the property in perpetuity for his subsistence;
- (3) Holders of Sir, as provided in rules 2, 8, 10 and 11 of the Sub-settlement Act;
- (4) Holders of Nankar land as provided in the rules of the Sub-settlement Act. Such Nankar was called *Nankar dehi*. *Nankar ismi*, and *tankhai* did not create under-proprietary rights;
- (5) Sir or Nankar in the possession of founders of Parwas as provided by rule 11 of the Sub-settlement Act;
- (6) Birt, which means cession. Birt tenures prevail chiefly in Bahraich, Fyzabad and Gonda. Birt tenures are estates carved out by Taluqdars out of Taluqas in favour of others.

According to definition of "Agriculturist" as given in the Act, the following kinds of under-proprietors only can come within the definition of Agriculturist and not others:—

- (a) Under proprietors holding a sub-settlement of land—Section 2 (2) (d).
- (b) Under-proprietors of specific plots—Section 2.—Explanation III.

Sub-settlement of land—meaning.—This sub-settlement was made under the Oudh Sub-settlement Act No. XXVI of 1866. The Act was passed to revise and correct what had been hastily and imperfectly or loosely done, and to secure that no person should enjoy under-proprietary rights, who could not establish his claim in the manner prescribed by those rules—31 A. 394.

First Proviso if controlled by the explanation VII.—It is clear from the definition of "Agriculturist" that the Act is meant to benefit the smaller class of "Agriculturist" generally. To this an exception has been made by the first proviso and Sections 2 (10) (a), 3, 4, 5, 8 and Chapters IV and V have been made applicable to all "Agriculturists" irrespective of the limitations contained in the main section. Explanation VII added to this section seems to control the effect of this proviso. A Bench of the Allahabad High Court held:¹⁹ "Explanation 7 has been added in order to explain the provisions of the main section particularly (b), whereas the proviso is intended to exempt, from the operation of the limits imposed, certain sections and two specific chapters. There is nothing in Explanation 7 to suggest that it was intended to apply to applications governed by Chapters IV and V and other sections mentioned in the proviso. The Explanation is subject to the proviso so far as the applications specially exempted under it are concerned." The Chief Court of Oudh did not agree with this view and in a full bench decision²⁰ laid down that Explanation VII to Section 2 (2) is independent of the first proviso and it is not an addition to clauses (a) to (g) of Section 2 (2). Even if a person is an agriculturist under that proviso he is not to be deemed such if he holds land in a district subject to the Banaras Permanent Settlement Regulation I of 1795 or holds land free of revenue and pays both rent and local rate the aggregate amount of which exceeds Rs. 500.²¹

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| <p>18. Syke's "Compendium of the law specially relating to the Taluqdars of Oudh".</p> <p>19. <i>Sheo Shankar v. Mohammad Hasan</i>, 1937 A 633=1937 A L J 680.</p> | <p>20. <i>Mahadio Prasad v. Jayannath Kuar</i>, 1939 O W N 1087.</p> <p>21. See also <i>Budri Prasad v. Rajendra Singh</i>, 1944 O W N 242=1944 O A 172=1944 Oudh 207.</p> |
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Second Proviso—Assessed to income-tax.—The persons referred to in the first proviso to Section 2 (2) of the U. P. Agriculturist's Relief Act are subject to the rule contained in the Second proviso to that sub-section. In other words a person who is an agriculturist by virtue of the first proviso to Section 2 (2) of the Act is as much subject to rules contained in proviso (2) as one who is an agriculturist under Section 2 (2) independently of the first proviso²². Under proviso 2 to Section 2 (2) it is not the payment of income-tax absolutely that takes away the effect of the first proviso but in the case of person belonging to class (a) only when the income-tax which he pays exceeds the local rate payable on the land which he holds. The proviso clearly shows that it is not the payment of income-tax irrespective of its amount that attracts the operation of that proviso²³. "Assessed to income-tax" however means "assessed during the last financial year," and does not mean at the present time. In order to determine whether a debtor is or is not assessed to income-tax a convenient test is to find out whether the debtor admits or does not admit that he was assessed to income-tax for the last financial year for which assessments have been made by the income-tax department. The mere fact that during the current year his return is still under examination and Income-tax Officer has not yet decided whether he should or should not be assessed makes no difference²⁴. This case is merely an authority as to the meaning of "is assessed," and the learned Judges did not decide the point of time to which the assessment is referable in any particular case, and therefore if a debtor claims the benefit of Section 30 he must show that he was an Agriculturist at the date of the advance, and as such the criterion for a person falling under Section 2 (2) (f) is whether he was assessed to income-tax for the year in which the loan was advanced and to what amount he was thus assessed²⁵. This case appears to have laid down that if a person is assessed to income tax which exceeds the limits prescribed by the definition of "Agriculturist" in the year in which the loan was advanced, he will not be deemed to be an Agriculturist²⁶. Where proof of assessment to income-tax is given regarding a claimant to the status of an agriculturist, then the onus is on him to make out that his case comes within the exception contained in proviso (ii) of Section 2 (2)²⁷. The intention of Rule 1 is not to exclude all evidence except chalans and receipts²⁸.

Third Proviso—Surety—can joint-debtor raise this plea?—This proviso provides another exception to the general rule laid down in the section. The court has to decide whether the non-agriculturist is a surety or not. Surety is not defined in the Act. The definition given in Section 123 of the Indian Contract Act is : "A contract of guarantee is a contract to perform the promise or discharge the liability of a third person in case of his default. The person who gives the guarantee is called the 'surety' the person in respect of whose default the guarantee is given is called the 'principal debtor' and the person to whom the guarantee is given is called the creditor. A guarantee may be oral or written. In most cases specially in cases of promissory notes the surety joins a contract without this fact being mentioned in the deed. In such cases, the question is whether the surety can plead, in view of Section 92, Indian Evidence Act, that he is a surety and not a joint-debtor. The Allahabad High Court in *Behari Lal v. Allahabad Bank*, 1929 A 664 held that a person signing a promissory note as a principal debtor cannot be allowed to plead that he is a surety. The same view has been taken by the Madras High Court²⁹, the Lahore High Court³⁰, the Bombay High Court³¹, the Calcutta High Court³² and the Rangoon High Court.³³ A contrary view has been taken by the Chief Court of Oudh in *Mohammad*

22. *Shen Ratan Singh v. Deputy Commissioner Fyzabad*, 1938 O W N 1001.
23. *B. N. Vyas v. Barkhandi Mahech Pertap Narain Singh*, 1938 O W N 836.
24. *Raj Narain v. Bindalan*, 1936 A 449=1936 A W R 428=1936 A L J 501.
25. *Ganshi Lal v. Shiam Lal*, 1943 A 190.
26. See also *Brij Jivandas v. Kawai Mani Bibi*, 1942 A L J 615=A IR 1942 A 444.

27. *Baijnath Prasad v. Gokul*, 1943 A L W 280.
28. *Budri Prasad v. Rajendra Singh*, 1944 O W N 242=1944 Oudh 267.
29. (*Nanbari*) *Venkata Krishnapya v. Karnekan Kothari*, 1953 Madras 643;
30. *Abdul Hameed v. Punjab National Bank*, 1933 Lahore 965;
31. *Khamji Gayaji & Co. v. Damaji Konsey* 1934 B 49;
32. *Radhakishen Chamaria v. Durga Prasad Chamaria*, 1932 C 328.
33. *Maung ko Gyi v. U. Kyaw*, 1927 Ran. 199.

*Husain v. Hanoman Prasad*³⁴ where it has been laid down that where a pronote is jointly executed by two persons parol evidence to prove that one of them had signed the pronote only as a surety is admissible.

Note.—Where in deed of mortgage it is declared that one of the two executants thereof was not an agriculturist it is not open to the mortgagors to deny this and claim the benefit of the Act in defence to a suit on the mortgage³⁵.

Explanation I—“Rent” and revenue—meaning.—These terms have not been defined in this Act. Their definition is to be found in the Uttar Pradesh Tenancy Act ;

“Rent.”—Means whatever is, in cash or kind, or partly in cash or kind, payable on account of the use or occupation of land or an account of any right in land. In view of Explanations IV and V added to this sub-section, where rent is payable in kind, it means the money equivalent thereof recorded in the khatauni of the previous year. It, however, does not include Zaid matalba or any amount paid in excess of the rent legally payable.

“Revenue”—means land revenue and includes revenue assessed only for the purpose of calculating the local rate payable under the Uttar Pradesh Local Rates Acts, 1914.

Explanation II—Joint Hindu Family.—There had been a great controversy with respect to the status of a member of the joint Hindu family as an agriculturist. The Allahabad High Court, in the case, *Allahabad Bank Ltd. Meerv v. Prakash Nath* 1937 A. L. J. 970=1935 A. 12, held that each member of a joint Hindu family cannot claim the benefits conferred by Sections 5 or 30 because they are expressly excluded in Explanation II. For the purposes of applications under Section 5 or applications under Chapter IV the person recorded as owner or the person paying revenue etc is the only person who can apply. In the same volume at page 1345 in *Kedar Prasad v. Suraj Narain* it was held that where there were three defendants, members of a joint Hindu family, out of whom two only were entered as tenants, the tenancy was held by the joint family which paid rent for agricultural land not exceeding Rs. 533 per annum therefore the case fell under Section 2 (2) (f) i.e. the whole family was an agriculturist. This view was followed in *Bengalimal v. Bansilal*, 1939 A. L. J. 233=1939 R. D. 171=1939 A. 391. Subsequently the matter was referred to a Full Bench of the Allahabad High Court and in *Sri Nath v. Puran Mal* and another, 1942 A. 19, this controversy was set at rest by the following pronouncement.

“The net result of the proviso and Explanation II is that every member of joint Hindu family is to be an agriculturist for the purposes of the sections and chapters mentioned in the proviso irrespective of the amount of the revenue, rent, or local rate paid by him or the family or the area of land held by him or the family. Whereas for the purposes of the rest of the sections and chapters of the Act, a member of a joint Hindu family is to be deemed to be an agriculturist within the meaning of the Act only if an apportionment and ascertainment of his individual share of the revenue, local rate, rent or land, the limit provided for the clauses (a) to (g) to Section 2 (2) is not exceeded.”

The Chief Court of Oudh³⁶ dissented from the view taken by the Allahabad High Court in *Allahabad Bank Ltd. v. Prakash Nath*, 1938 A. 12 and held that Explanation II must be read with the first proviso, and there is no express exclusion of Sections 5 and 30 etc. in the explanation. In *Balbir Prasad v. Rajendra Singh*³⁷ the view taken by the Allahabad High Court in 1943 A. 19 has been endorsed and it has been laid down that Explanation II to Section 2 (2) must be read with proviso I to the sub-section. The explanation restricts the benefits of Chapters II (except Sections 3, 4, 5, and 3), III, and VI of the Act to such members of a joint Hindu family as fulfil the conditions as to limit of rent, revenue, and local rates laid down in clauses (a) to (g), but does not lay down that such members, if their rent-revenue etc. exceeds the limits so prescribed, have no right to avail of the provisions of the other portions of the Act, which right they have been expressly given by the first proviso to Section 2 (2) of the Act.

34. 1942 Oudh 273.

35. *Hari Prasad Tama v. Mohan Lal Sah*, 1944 A. L. J. 486.

36. *Raza Husain v. Shankary Saran* 1940 OWN 1219=1940 R. W. 595.

37. 1944 OWN 242.

Explanation III—Underproprietor of specific plots.—Section 2 (2) (d) gives the benefits of the Act to such under-proprietors who are holding a sub-settlement of land the revenue of which does not exceed Rs. 1000/- per annum. The explanation extends the benefit to the under proprietors of specific plots as well, though they do not hold a sub-settlement.

Explanation VII, and its effect on the first proviso.—In *Sheo Shankar Dass v. Mohammad Husain*,³⁸ the Allahabad High Court held : that the explanation was added to explain the provisions of the main section particularly (b), whereas the proviso was intended to exempt from the operation of the limit imposed by certain sections and two specific chapters. There was nothing in Explanation VII to suggest that it was intended to apply to applications governed by Chapters IV and V and other sections mentioned in the proviso : the explanation being subject to the proviso so far as applications specially exempted under it were concerned.

The Chief Court of Oudh in *Mahadeo Prasad v. Jugannath Kuar*³⁹ has held that the term explanation does not properly apply to what has been enoted in Explanation VII and the provision in it is more in the nature of a proviso to the first proviso than an explanation of the main section. The explanation is independent of the first proviso and is not an addition to clauses (a) to (g) of Section 2 (2). Even if a person is an agriculturist under that proviso he is not to be deemed such if he holds land in a district subject to the Banaras Permanent Settlement Regulation, I of 1795 or holds land free of revenue and pays both rent and local rate the aggregate amount of which exceeds Rs. 590/-.

(3) "Bond" means a bond as defined in Section 2 of the Indian Stamp Act, 1899.

"Bond"—meaning.—"Bond" is not defined in this Act, but the definition as given in Section 2 of the Indian Stamp Act II of 1899 has been referred to. The definition given in the Stamp Act is :

"Bond" includes—

- (a) any instrument whereby a person obliges himself to pay money to another on condition that the obligation shall be void if a specified act is performed or is not performed as the case may be ;
- (b) any instrument attested by as witness and not payable to order or bearer, whereby a person obliges himself to pay money to another ; and
- (c) any instrument so attested, whereby a person obliges himself to deliver grain or other agricultural produce to another.

(4) "Collector" means the officer appointed as Collector of a district under the Land Revenue Act, 1901.

(5) "Court" means a Civil Court.

"Court" meaning of.—Court means a Civil Court. Section 10 appearing in chapter III is the only section which provides that applications under that chapter shall if the principal money does not exceed Rs. 300/- be brought before the Collector, and the word "Court" in such cases includes a Collector⁴⁰. It includes a Small Cause Court⁴¹.

(6) "Co-operative Society" means a society registered under the provisions of the Co-operative Society Act, 1912.

(7) "Creditor" in Chapter V means a person who, in the regular course of business, advances a loan as defined in this Act, and includes the legal representatives and the successors-in-interest, whether by inheritance, assignment or otherwise, of a creditor.

38. 1937 AII 680=1937 AWR 605.
 39. 1937 OWN 1087 (FB)=1940 Oudh
 67.
 40. *Umrao Prasad v. Mohammad Baksh*, 1942 O W N 53; *Ram Autar Misir v. Mahabir Shukul*, 1942

O W N 549=1942 Oudh 458.
 41. *Baldeo Narain v. Debi, Narain*
 1937 O W N 589=1937 R. D. 321.
 See also *Umrao Prasad v. Mohammad Baksh*, 17 Luck 725.

Creditor ceasing to do business—effect.—The Allahabad High Court in *Man Mohan Lal v. Sahib Shankar*⁴² has laid down that if the money-lender was carrying on the business of money-lending at the date when the particular loan in question was advanced, he is a creditor for the purposes of this Act. The question whether that business of money-lending was continued up to the date on which the Act came into force, or stopped prior to that date, is immaterial. The same view has been taken by the Chief Court of Oudh in *Bodla Ram v. Sukh Mongal Singh*⁴³, in which it has been specifically held that a creditor ceasing to do business as a money-lender does not cease to be creditor, and for the purposes of Sections 32 and 34 it has to be seen if he was a creditor at the time of the loan⁴⁴.

In the regular course of business—meaning.—These words import an idea of repetition, continuity and system. A man who carries on the business is ready and willing to lend money to every such person who can agree to his terms as to the rates of interest or the security for the money. The inherent notion in all those transactions is the earning of profits, in a business habitually carried on. A person who occasionally lends money to strangers, friends or relatives cannot be said to be a creditor as defined in the Act. The implication of the definition of 'creditor' is this, that for a person to become in the technical sense a 'creditor', the advance which he makes must be made in the regular course of business. In other words, it must be found that at the time when he makes the advance, the lender is a person who is practising the business of advancing loans⁴⁵. A person who merely advances loans to friends to help them is not a creditor⁴⁶.

(8) "Interest" includes the return to be made over and above what was actually lent, whether the same is charged or sought to be recovered specifically by way of interest or in the form of service or otherwise.

"Interest"—meaning of.—Interest is not at all an advance made to the debtor by a creditor, but is a return to be made over and above the advance which is stipulated under the contract between the parties⁴⁷. The original amount borrowed is the principal and whatever else in excess of the principal is payable by the debtor is interest⁴⁸. The word "return" is very significant. It includes not only money but also service and usufruct. Therefore the usufruct which a usufructuary mortgagee receives from the property mortgaged is interest within the meaning of the Act⁴⁹. Similarly rent reserved in a lease given to the mortgagor by the usufructuary mortgagee is nothing else, but a return to be made to the mortgagee over and above what has been actually lent and as such comes within the definition of interest⁵⁰.

(9) "Land" and "landlord" shall have the same meaning as in the Agra Tenancy Act, 1926.

"Land"—meaning of.—In the Agra Tenancy Act III of 1923, land has been defined as follows:—

"Land" means land, which is let or held for agricultural purposes or grove land or for pasture. It includes land covered by water used for the purpose of growing Singhara or other similar produce but does not include land for the time being occupied by the dwelling houses or manufactories or appurtenant thereto.

What is land.—The following have been held to be "land":—

- (1) Barren land situated in the middle of the agricultural land⁵¹,
- (2) Land used for Singhara⁵²,
- (3) Tea plantation⁵³,
- (4) For cultivation of *pans*⁵⁴.

42. 1943 A L J 159=1943 A 194.

43. 1944 R D 187.

44. *Bhagwan Ram v. Goswami Radhey Lal*, 1 L R 1946 A 102.

45. *Brij Bhukar v. Bankay Lal*, 1943 A L W 184. See also *Kali Prasad v. Badri Narain Prasad*, 1943 A L W 42; *Mohd. Mehdi v. Mst. Narain*, 1949 A 326.

46. *Mohd Mehdi v. Narain Dei*, 1949 A W R 45; *Kalapnath v. Surajpal Singh*, 1948 O W N 367.

47. *Dharam Singh v. Bishen Sarup*,

1937 A L J 882.

48. *Maung Sam Nyun v. Maung Po Nu*, 1935 Rangoon 525.

49. *Sheo Charan Lal v. Umrao Begum*, 1938 R D 794=1938 A W R 619=1938 A 611=1938 A L J 892.

50. *Ram Narain v. Chandika Prasad*, 1938 O W N 538=1938 Oudh 156.

51. 13 U D 92.

52. 13 S D of 1914.

53. 2 U D 750.

54. 33 I C 497.

- (5) Plantain growing land ^{55.}
- (6) Pasture land ^{56.}
- (7) Land on which owner has planted grove is agricultural land ^{57.}

What is not land.—The following have been held not to be land :—

- (1) Land used for growing thatching grass ^{58.}
- (2) Land occupied by bamboo clumps ^{59.}
- (3) Land used for growing pula grass ^{60.}
- (4) Land used for fodder of cattle ^{61.}
- (5) Land used for indigo factory ^{62.}
- (6) Land immediately adjoining abadi containing remains of house and growing miscellaneous fruit trees ^{63.}
- (7) Land occupied by residential house and out-houses for servants and open house appurtenant to the house ^{64.}

Agricultural land.—This word has been used in Section 2 (2) (f). Therefore in order to attract the application of this clause, the land must be agricultural. For a discussion of the meaning of the word see *Ganga Sagar x. Rooti Prasad* ⁶⁵ and *Ziaul Rahman v. Ganga Das* ⁶⁶.

"Landlord"—meaning.—The definition given in Agra Tenancy Act, II of 1926 is as follows :—

"Landlord" means the proprietor of a *mahal* or of a share or specific plot therein.

"Mahal"—meaning of.—"Mahal" has been defined in Section 4 (4) of the Uttar Pradesh Land Revenue Act, 1901 :

"Mahal" means—

- (a) Any local area held under a separate engagement for the payment of the land revenue :

Provided that

- (i) If such area consists of single village or portion of a village, a separate record of rights has been framed for such village or portion.
- (ii) If such area consists of two or more villages or portions of villages a separate record of right has been framed either for the entire area or for each of the villages included therein :
- (b) any revenue free area for which a separate record of rights has been framed :
- (c) for such purposes as the State Government may determine, any grant of land made heretofore or hereafter, under the Waste Land Rules; and
- (d) any other local area which the State Government may by general or special order declare to be a *mahal*.

(10) (a) "Loan" means an advance to an agriculturist, whether of money or in kind, and shall include any transaction which is in substance a loan, but shall not include—

- (i) a loan advanced by [the Central Government or the State Government] or by any Municipal, District or Cantonment Board authorized by the [State Government] to advance loans, or by a Co-operative Society ;
- (ii) except for the purposes of Sections 7, 8, 33(1), 35, 56 and 39 (1), (3) and (4), small loans not exceeding Rs. 20 repayable within a year in fixed equated instalments the total

55. 3 U D 471.

61. 12 U D 68.

56. 52 A 566; 1930 A L J 352.

62. 4 S D of 1891.

57. 1935 A W R 955.

63. 17 R D 813.

58. 9 U D 47.

64. 1939 R D 405.

59. 5 U D 267.

65. 1940 A 407=1940 A L J 695.

60. 3 U D 75.

66. 1939 A 323.

of which does not exceed the principal by more than 10 or 20 per cent according as the instalments are spread over a period of less than six months or more than six months, provided that no further interest is charged in addition to fixed equated instalments; and

- (iii) a loan of agricultural produce repayable at the next harvest with not more than one-quarter of the quantity of the said produce by way of interest.

Explanation.—A loan advanced as one transaction shall, for the purpose of sub-clause (ii), be deemed to be one loan, even though it is evidenced by several separate documents or by separate entries in a document.

(b) “Secured loan” means a loan for which property other than agricultural produce is specifically hypothecated as security.

(c) “Unsecured loan” means a loan which is not secured.

What is not a loan.—The definition of loan as given in this Act is very wide. The following are instances of loan :—

- (1) An earlier transaction of loan if renewed is a loan ⁶⁷.
- (2) The mortgage-money advanced by a mortgagee is a loan ⁶⁸.
- (3) An advance to an agriculturist whether of money or in kind.
- (4) An existing liability substituted by a mortgage or pronote, irrespective of the manner in which the original liabilities arose. ⁶⁹

What is not a loan.—The following are instances of what is not loan :—

- (1) Advance to a non-agriculturist.
- (2) Loan advanced by the State Government.
- (3) Loan advanced by any Municipal, District or Cantonment Board.
- (4) Loan advanced by a Co-operative Society.
- (5) Loan not exceeding Rs. 20 and payable in fixed equated instalments except for the purposes of Sections 7, 3, 33 (1), 35, 36 and 39 (1), (2) and (4).
- (6) Loan of agricultural produce payable at the next harvest with interest at 25 per cent. of the said produce.
- (7) Price of articles ⁷⁰.
- (8) Dower ⁷¹.

Loan in substance—meaning and example.—The words ‘in substance’ imply the words ‘but not in form’ that is to say, something which is not exactly an advance to an agriculturist whether of money or in kind. These words occur in the Bihar Money-lender Act, and Sulaiman J. has given a very instructive interpretation of these words in *Surendra Prasad Narain Singh v. Sri Gajadhar Prasad Sahu Trust Estate* ⁷². In *Jaigwinder v. Lachmi Narain Ram*, another case in which the Bihar Money-lender Act had to be interpreted these words were interpreted to include the ‘renewal of a loan’ in the category of a ‘loan in substance’. It is difficult to lay down one definite rule of interpretation for finding out ‘a loan in substance’. In every case we have to look to the substance of the transaction to find out if it is a loan. Under the circumstances a few illustrative cases are given below to serve as a guide in coming to a decision whether a particular transaction is a loan :—

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| 67. <i>Pratap Singh v. Galzari Lal</i> , 1942 A L J 3=1942 A 182=1942 A L W 111; <i>Ketki Kuar v. Ram Saroop</i> , 1942 A L J 578=1942 A 390=1942 A L W 559; <i>Harakh Chand v. Lalta Prasad</i> , 1943 O W N 104=1943 O 295. | 69. <i>Sheo Balak v. Sarabjit Singh</i> , 1952 A 516. |
| 68. <i>Sheo Charan Lal v. Umrao Begum</i> , 1938 R D 794; <i>Wahid-uddin v. Makhan Lal</i> 1938 A L J 872=1938 A 564=I L R 1938 A 781. | 70. <i>Nihal Singh v. Ganesh Dass Ram Gopal</i> , 1937 O W N 1158=1937 Oudh 124; <i>Chitra Singh v. Roshan Singh</i> , 1943 A L J 323=1943 A 301. |
| | 71. <i>Rehana Khatun v. Igtidar-uddin Hasan</i> , 1943 A L J 98=1943 A 184=1943 A L W 166. |
| | 72. A I R 1940 F C 10. |

(1) An agriculturist entered into an agreement with the owner of a sugar factory whereby the latter advanced to the former a sum of money stated to be in relation to the sale of his sugarcane crop. The crop was hypothecated and the agriculturist covenanted to deliver the crop when ready at a specified rate and the money advanced was to be treated as payment for the sugarcane so delivered. In default of the delivery of crop the money was to be returned with interest. The transaction is a loan in substance⁷³.

(2) Renewed loan.—There has been some controversy with respect to a renewed loan if it is to be considered as a loan in substance. In *Dharam Singh v. Bishan Singh*⁷⁴, the Allahabad High Court held that loan meant a cash advance only and not a renewed loan. This case was however overruled in a Full Bench decision of the same court in *Prabat Singh v. Gulzari Lal*⁷⁵, where the majority of judges held that where an earlier transaction of loan is renewed the new transaction itself is a 'loan' for the purposes of the U. P. Agriculturists' Relief Act. The reasons given by the majority of the judges in this case were adopted by another Full Bench of the same court in *Ketki Kuwar v. Ram Swaroop*⁷⁶, in interpreting the 'loan' as defined in the U. P. Debt Redemption Act and it has been held that a renewed loan is a transaction, which in substance amounts to an advance within the meaning of Section 2 (9) of the U. P. Debt Redemption Act. See also *Harak Chand v. Lalta Prasad*⁷⁷. However, when there were renewals both before and after the Act, Section 30 would apply to renewals before the Act, and Section 28 to those after the Act.

(3) A purchased a half share in a motor lorry, and unable to pay the price executed a mortgage of his lands in favour of the vendor *B*. In a suit by *B* for the recovery of the amount, *A*, an agriculturist, claimed the benefits of the U. P. Agriculturists' Relief Act. It was held that the transaction is not in substance a loan⁷⁸.

Second Loan—meaning.—It has been defined as a loan for which property other than agricultural produce is specifically hypothecated. It is clear therefore that the property hypothecated may be movable or immovable. Thus secured loans will include advances where movable property is pawned as a security for the advance⁷⁹.

Security subsequently found void—Effect.—The Allahabad High Court in *Kunj Behari Lal v. Ketki Kuwar*⁸⁰, held that the correct date to take for the division of loans into two classes is the date on which the loan is taken. In this case there was originally a secured loan, but the creditor afterwards gave up the security and obtained a simple money decree. Their Lordships held it to be a secured loan. This view was followed by the Chief Court of Oudh in *Khuwal Chand v. Pirthipal Singh*⁸¹. In this case a decree dated the 15th February, 1932, was passed by a compromise on a pronote for Rs. 41,380. By the compromise decree some property was given as security. The question was whether the loan was to be regarded as an unsecured loan throughout or whether it was originally an unsecured loan but became a secured loan from 15th February, 1932, and on the basis of 1937 A. L. J. 177 it was held to be an unsecured loan.

Both these cases have been distinguished in *Ovind Pershad v. Surendra Nath*⁸², where it has been held that when the security given is held to be void and ineffective, the loan should be regarded as unsecured.

Legislative changes.—The words [the Central Govt. or the State Government] for the words [Local Govt.] and the words [State Govt.] for the words [Local Govt.] in clause (i) of sub-section 10 (a) of Section 2 were substituted by A. O. 1937 as amended by A. O. 1950 throughout the Act.

(11) "Money" shall be deemed to include agricultural produce, implements and stock.

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| 73. <i>Har Pershad v. Sewa</i> =1938 A L J 694 (697) F B=1938 O W N 753.
74. 1937 A L J 382=1937 R D 536.
75. 1942 ALW 111=1942 A 182.
76. 1942 ALW 559.
77. 1943 OWN 104.
78. <i>Mohammad Shibli Khan, Ishwarlal Dikshit</i> =1939 A L J 241 | =1930 A W R 252=1939 A 398.
See also <i>Narain Dass v. Radha Kuwar</i> , 1938 A L J 1063=1939 A 47
=1938 A W R 770.
79. 1938 A L J 872.
80. 1937 A L J 177.
81. 1937 O W N 875.
82. 1938 O W N 220. |
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(12) "Prescribed" means prescribed by this Act, or by rules made under this Act.

(13) "Thekadar" shall have the same meaning as in the Agra Tenancy Act, 1926.

Thekadar—meaning.—Thekadar has been defined in Section 199 of the Agra Tenancy Act, III of 1926, as 'a farmer or other lessee of proprietary rights in land and in particular, of the right to receive rent or profits'. A Thekadar is a lessee of proprietary rights and Theku should be distinguished from ordinary cultivating lease.⁸³

The definition has been specially interpreted in 1927 A 78 and in 8 R. D. 703.

(14) "Under-proprietor" shall have the same meaning as in the Oudh Rent Act, 1886.

Under-proprietor—meaning.—It has been defined in Section 3 (8) of the Oudh Rent Act XXII of 1886 as 'a person possessing a heritable and transferable right of property in land for which he is liable or but for a contract or decree would be liable to pay rent'.⁸⁴ This definition has been adopted in *Mohammad Zaman Beg v. Ilahi Bux*⁸⁴. But the definition is not exhaustive. In addition to the elements of heritability and transferability, there is one essential factor in under-proprietary rights, viz., in no circumstances is the proprietor afforded a right of re-entry against the under-proprietor, *see* 4 L. R. 59. For further comments see commentary on Section 2 (2) under the heading 'under-proprietor' *supra*.

CHAPTER II

Suits Against Agriculturists

Note.—Sections 3 to 8, i.e., Chapter II of the U. P. Agriculturists' Relief Act has been repealed by Section 27, read with the second schedule of the U. P. Debt Redemption Act, XIII of 1940, except in their application to advances made before the first June, 1940, not being loans as defined in the U. P. Debt Redemption Act. A debtor cannot therefore claim benefits of these sections in respect of such a loan⁸⁵.

3. Fixing of instalments at the time of passing of decree.—(1) Notwithstanding any provision in the Code of Civil Procedure, 1908, to the contrary, the Court, at the time of passing a decree for money or a preliminary decree for sale in default of payment of money or a preliminary decree for foreclosure against an agriculturist, may, and, on the application of such agriculturist, shall, unless for reasons to be recorded it directs otherwise, direct that the total amount found due for principal, interest up to the date of the decree and costs, if any, shall be paid in such number of instalments payable on the dates fixed by the court as having regard to the circumstances of the judgment-debtor and the amount of the decree, the Court considers proper;

Provided that the period of such instalments shall not exceed beyond four years from the date of the decree in the case of an agriculturist to whom Chapter III applies, and beyond fifteen years from such date in the case of other agriculturists:

Provided further that, if the Court is satisfied that on account of an agricultural calamity the payment of any instalment by a judgment-debtor is likely to cause hardship, it may, after notice to the decreee-

83. 15 R D 212.

84. 6 R D 110=4 U D 24.

85. *M. Iftikhar Ali v. Jaydish Chanda*, 1948 A L J 160.

holder, allow such further time for payment of such instalment as it may consider proper.

(2) The Court may, at the time of passing an instalment decree against an agriculturist, either attach his immovable property, if any, or declare a charge on such property within the meaning of Section 100, Transfer of Property Act, 1882, to the extent of the amount decreed.

(3) An attachment under sub-section (2) shall, unless the Court directs otherwise, subsist until the decree has been paid off or otherwise satisfied, and all provisions in the Code of Civil Procedure, 1908, relating to attachment in execution of decrees and to investigation of claims to attached property shall apply to such attachment.

(4) If the decree provides for payment by instalments, the Court shall direct that, where the number of instalments allowed is four or five and any two instalments are in arrears, or where the number allowed is six or more and any three instalments are in arrears the decree-holder may, notwithstanding the provisions of any law for the time being in force, immediately enforce payment of the whole amount then remaining due under the decree, and in the case of a decree, for sale or foreclosure apply that a final decree shall be passed.

(5) Nothing in any order made in an instalment decree shall debar a judgment-debtor from paying at any time, towards the satisfaction of the decree, the whole of the amount that may be due thereunder or any amount exceeding the amount of an instalment that may be fixed under the decree.

Legislative changes.—Repealed by Section 27 (1) of U. P. Act XIII of 1940, made by the Governor in exercise of the powers assumed under Section 93 of the G. of I. Act, 1935, except in its application to advances made before the first day of June, 1940, not being loans as defined in that Act.

Scope of the section.—This section gives relief to the agriculturists by giving them a right to claim instalments for the payment of the decretal amount. At the time of the passing of the following decrees the court may and on the application of the judgment-debtor agriculturist shall pass an instalment-decree, unless for reasons to be recorded it directs otherwise :—

(a) A decree for money.

(b) A preliminary decree for sale in default of payment of money.

(c) A preliminary decree for foreclosure.

Note.—It is however to be noted that this section has been repealed by the U. P. Debt Redemption Act. Therefore if a person is entitled to the benefits of Sections 8 or 9 of the Debt Redemption Act, he cannot claim instalments under Section 3 of the Agriculturists' Relief Act ⁸⁶.

A decree for money—meaning.—There is a conflict of views with respect to the interpretation of these words as used in the U. P. Agriculturists' Relief Act. The Chief Court of Oudh in *Nihal Singh v. Ganesh Dass Ram Gopal*⁸⁷, held that these words were quite general and were applicable to all money-decrees whether they were based on loan or on any other claim. This view was followed in a subsequent decision of the same court in *Yusuf Husain Beg v. Wazir Ali Beg*,⁸⁸. The Allahabad High Court in a Full Bench decision *Shah Chaturbhuj v. Shah Mauji Ram*⁸⁹, dissented from these two decisions of the Chief Court and held that though these words were of general application but a consideration of the other provisions of the Act led to the conclusion

86. *Shiam Lal v. Mukat Lal*, 1945

O W N 21 (H C).

87. 1936 O W N 1158—1937 Oudh

124.

88. 1937 O W N 889=A I R 1937

Oudh 487.

89. A I R 1938 A 456=1938 A L J

628.

that they were used by the legislature in a restricted and not in a general sense and as such they refer only to a decree for money passed with respect to a loan as defined by the Act. This view was followed in a subsequent Full Bench decision of the same court in *Har Prasad v. Sewa*,⁹⁰. On the basis of these decisions it was held in *Narain Das v. Radha Kuar*⁹¹, that a decree for damages for breach of contract could not be deemed to be decree based on a loan, and as such instalments could not be granted. In *Sri Maha Kaliji v. Kali Prasad*⁹², the same view was followed and instalments with respect to costs were not granted, while in *Rehana Khatun v. Iqtidar Uddin Husain*⁹³, instalments with respect to decree for dower were refused.

It is, however, to be noted that the section is applicable only to such decrees as contain a direction for payment of money. A compromise decree, providing for the satisfaction of the decree by execution of a sale deed of a portion of the mortgaged property by the judgment-debtor can in no sense be said to be a decree for money, and as such no instalments can be granted.⁹⁴

Grant of Instalments and Court's discretion.—The provisions of the section are mandatory and it is incumbent on the Court to grant instalments on the application of the agriculturist judgment-debtor except in those cases where the Court for cogent reasons to be reduced into writing does not allow them⁹⁵. Instalments may be granted even in a case under Section 33, U. P. Agriculturists' Relief Act⁹⁶. Where a case is *ex parte*, the language of the section is wide enough to give a discretion to the Court to grant instalments. It is to be noted that this section in no way fetters the powers of the Court to grant instalments under O. 20, R. 11, C. P. C., and in this view of the law instalments extending beyond the period given in the section can be granted in the discretion of the Court⁹⁷. However the words "unless for reasons to be recorded it directs otherwise" clearly show that the section gives discretion to the Court not to allow instalments in some cases in which it considers there are reasons for not allowing them⁹⁸.

Period of Instalments.—Effect of the First Proviso.—The proviso has divided the agriculturist into two categories, viz., (1) Those to whom the provisions of Chapter III apply would be entitled to instalment extending over a period not exceeding four years; (2) All other agriculturists who are entitled to instalments extending over a period of fifteen years. The words "an agriculturist to whom Chapter III applies" have created some difference of opinion. The Chief Court of Oudh in *Girwar Singh v. Ramman Lal*⁹⁹, held that these words mean an agriculturist falling under clauses (a) to (h) of the definition in Section (2). The fact that Chapter III prescribes the form of a special class of mortgage and deals with proceedings for redemption of certain mortgages appears to be immaterial because the reference in the proviso is not to the nature of the proceeding but to the status of the agriculturist to whom the benefit of instalments is to be allowed. The same view was taken in *Kanhaya Lal v. Changa*¹, and in *Gauri Shankar v. Ganga Baksh Singh*². The Allahabad High Court in *Ram Ghulan v. Bindu Singh*³, held that in case it was established that the judgment-debtor was a mortgagor agriculturist, the court had no jurisdiction to order instalments to be spread over a period exceeding four years. In a subsequent decision in *Muzaffarnagar Bank v. Fatta*⁴, a distinction has been drawn that the person referred to in the first proviso for whom a four-year limit is prescribed is one who has made an application under Chapter III and to whom Chapter III therefore applies. See also *Umrao Ali v. Rup Singh*,⁵.

Court's power to extend time.—The second proviso to Section 3 (1) gives powers to the court to extend the period for the payment of any instalment, if it is likely to cause hardship to the judgment-debtor on account of an agricultural calamity. It is to be noted that this power of extension is given only in cases of agricultural calamity,

- 90. *A I R 1938 A 461*= 1938 A L J 694,
- 91. 1938 A L J 1063.
- 92. 1939 A L J 156=1939 R D 104.
- 93. 1943 A L J 98=A I R 1943 A 184.
- 94. *Thakur Rughuraj Singh v. R. B. L. Hari Krishan Lal*, 1938 R D 405=1938 Oudh 107.
- 95. *Girwar Singh v. Har Prasad* 1937 A L J 1367=1938 A 52; *Muzaffarnagar Bank v. Fatta*, 1937 A L J 1134=1937 A 778.
- 96. *Tirbhuvan Bahadur Singh v. Baijnath*, 1940 O W N 171=15 Luck

- 456=1940 Oudh 196.
- 97. *Girwar Singh v. Har Parsad*, 1937 A L J 1247=1938 A 52.
- 98. *Lalit v. Avadh Naresh Singh*, 1939 O W N 920.
- 99. 1936 O W N 1090=12 Luck 630=1937 Oudh 141=1936 R D 531.
- 1. 1936 R D 592 (Oudh).
- 2. 1937 O W N 130=1937 R D 75=1937 Oudh 266.
- 3. 1936 A L J 465=1936 R D 215.
- 4. 1937 A L J 1134=1937 A 778.
- 5. 1937 A L J 1291=1938 R D 90=1938 A 26.

which is likely to cause hardship to the judgment-debtor. The power is not general. However this does not take away the powers of the court under O. 20, R. 11 (2)—Agricultural calamity as used in this proviso has been defined in Section 2 (1).

Attachment and creation of charge.—Under sub-section (2) the court has been given a discretion, at the time of the passing of an instalment decree against an agriculturist either to attach his immovable property or declare a charge on such property. If the court has considered the question of taking action under Section 3 (2) and has given satisfactory reasons for not taking such action, the appellate court would not interfere in the exercise of this discretion, but the position would be different if the point has not been considered in the judgment, and then the appellate courts can take action under this sub-section⁶. Where no request is made for the declaration of a charge under this section before the trial court, the request cannot be entertained in appeal when the appellate court cannot possibly find what the circumstances of the defendant are and what the property of the defendant is on which any such charge could be created⁷. For the purpose of creating a charge sixteen years purchase price, i.e., sixteen times the annual profits is quite a fair rate for its valuation⁸. As to the effect of the charge see *Deota Din v. Jwala Prasad*⁹. A charge created by the decree is biding on the person who succeeds to the property¹⁰.

Small Cause Court have no powers to attach immovable property under Section 3 (2). The Nagpur High Court in *Ganga Prasad Laljee v. Rat an Chand Moorai Lal*¹¹ held that the Small Cause Court cannot charge immovable property. The Allahabad High Court in interpreting the provisions of Section 3 (2) held that the Small Cause Court, though it has no jurisdiction to attach immovable property, has jurisdiction to create a charge thereon by virtue of the terms of Section 3 (2)¹². The Chief Court of Oudh has dissented from the decision of the Nagpur High Court and following the view taken by the Allahabad High Court has held that a Small Cause Court can charge immovable property under Section 3 (2) of the U. P. Agriculturists' Relief Act, though independently of such a Provincial Act, the Small Cause Court has no jurisdiction under the general law¹³.

Default in payment of Instalments—Effect.—Section 3 (4) provides that where the number of instalments is four or five and any two instalments are in arrears or where the number allowed is six or more and any three are in arrears, the decree-holder, notwithstanding the provisions of any law for the time being in force, immediately enforce payment of the whole amount then remaining due under the decree. It is thus clear that if the number of instalments granted to the judgment-debtor exceeds five the decree for the entire balance cannot be executed unless there has been a default in the payment of three instalments¹⁴. There is no provision in the Act authorising the court to limit the decree-holder's right for enforcing the payment of the whole decretal amount to a case of default in the payment of consecutive instalments and such an order, if made, is illegal¹⁵. The default may be of any two or three instalments, as the case may be and not necessarily of consecutive instalments¹⁶.

Effect of Section 7, Encumbered Estates Act on Section 3 (4).—It is to be noted that the words "notwithstanding the provisions of any law for the time being in force, immediately enforce payment of the whole amount" do not override the provisions of Section 7 of the U. P. Encumbered Estates Act, which stays all pending proceedings in respect of any public or private debt and prevents the institution of fresh suits or other proceedings. Section 3 of the U. P. Agriculturists' Relief Act came into force on 30th April, 1935, Section 7 in its present form and its present place came into force on 18th July, 1935, when the U. P. Encumbered Estates (Amendment) Act was passed. Section 7 of the Encumbered Estates Act is thus subsequent to Section 3 (4) of the Agriculturists' Relief Act. The Legislature may pass a law which overrides or repeals an already existing law, but cannot pass a law which prevent-

- 6. *Govind Prasad v. Surendra Nath*, 1938 O W N 220=1938 R D 293.
- 7. *Mohammad Mohashim v. Joti Pershad*, 124 A L J 245=1941 A 277.
- 8. *Mukti Lal v. Raghu Raj Singh*, 1939 A L J 1043=1939 R D 609.
- 9. 1943 O W N 25=1943 Oudh 263=204 I C 561.
- 10. *Jogdamba Misir v. Ranjit Singh*, 1953 A 253.
- 11. 1934 Nagpur 118.
- 12. *Choudhury Bindraban v. Chotey Lal*, 1937 A L J 93=1937 A 124.
- 13. 1943 O W N 104=1943 Oudh 295=206 I C 352.
- 14. *Gur Charan Prasad v. Ali Sajjad*, 1938 A L J 94=1938 R D 844=1 L R 1938 A 1017.
- 15. *Gitwar Singh v. Raniman Lal*, 1936 O W N 1090=1936 R D 531.
- 16. *Gur Charan Lal v. Ali Sajjad*, 1938 A L J 691=1938 R D 844.

itself subsequently passing a new law which overrides or repeals laws previously existing. Therefore Section 7 of the U. P. Encumbered Estates Act overrides Section 3 (4) of the Agriculturists' Relief Act ¹⁷.

Default and Limitation.—The provisions of Section 3 (4) clearly mean that the limitation will commence to run from the date when on account of the default the decree-holder becomes entitled to enforce the decree, and whatever has happened prior to it is quite immaterial for the purpose of limitation ¹⁸.

Appeal.—There is no specific provision for an appeal in Section 3 of the Agriculturists' Relief Act, but this does not mean that an order under that section is not appealable. Suits under the U.P. Agriculturists' Relief Act are tried by the ordinary Civil Courts and unless there is any specific provision with regard to appeals in the Act, the question must be governed by ordinary law as contained in the Code of Civil Procedure, and an appeal would lie ¹⁹. But no such appeal would lie against an order by a Small Cause Court, as the decrees and orders of that Court are not open to appeal ²⁰.

Court fee in Appeal.—In an appeal against instalments granted in a decree under Section 3, the court fee payable would be fixed under Article 17 (vi) of Schedule II, Court Fees Act ²¹.

4. Future interest.—(1) Notwithstanding anything contained in the Code of Civil Procedure, 1908, the rate at which future interest may be allowed in any decree for payment of money or for sale in default of payment of money or for foreclosure or in any order for grant of instalments passed against an agriculturist shall not exceed the rate notified by the [State Government] in the [Official Gazette] under sub-section (2) as in force at the time when the decree or order, as the case may be, is passed.

(2) As soon as possible after the rate of interest at which the [Central Government] will lend money to the [State Government] is announced, the [State Government] shall notify that rate in the [Official Gazette], and publish it in such other manner as it thinks proper, and that rate shall be the rate in force for future interest from such date as may be notified by the [State Government] until such date as it is superseded by a new rate.

Legislative changes.—Repealed by Section 27 (1) of U. P. Act XIII of 1940 except in its application to advances made before the first day of June, 1940, not being loans as defined in that Act. The words [Central Government] were substituted for the words [Government of India] by A. O. 1937.

Rate of Interest.—The rate of future interest to be allowed under Section 4 should not exceed the rate notified by the State Government in the Gazette under sub-section (2) ²². It does not mean that it cannot be less than that rate, and in this court has a discretion ²³. By Notification No. 343, dated 1st May, 1935, published in the U. P. Gazette, dated 4th May, 1935, page 200 the rate of interest was notified at 3 1/2 P. C. from 8th May, 1935 to 14th January, 1936, while from 15th January, 1936, the rate of interest has been notified at 3 1/4 P. C. P. A. vide Notification No. 2677—II/1, dated 7th January, 1936, published in the U. P. Gazette, dated 11th January 1936, Part I, page 32.

Future Interest—If decree silent—The Chief Court of Oudh in *Girwar Singh v. Romman Lal*²⁴ held that Section 4 did not give the court any power to allow future

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| 17. <i>Ganesh Lal v. Chatarpal Singh</i> , 1939 O W N 754.
18. <i>Ganesh Singh v. Ram Sarup</i> , 1937 O W N 906; <i>Rana Umanath Bux Singh v. Sheo Pratap Gupta</i> , 1944 O W N 247.
19. <i>Tribhuwan Bahadur Singh v. Baij Nath</i> , 1940 O W N 371=1940 Luck 456=1940 Oudh 196. | 20. <i>Suraj Narain v. Kedar Prasad</i> , 1937 A L J 1345.
21. <i>Mohammad Yahia Khan v. Mangal Rai</i> , 1936 R D 236.
22. <i>Muzaffarnagar Bark v. Fatta</i> , 1937 A L J 1134.
23. <i>Mukat Lal v. Raghubaj Singh</i> , 1939 A L J 1048=1939 R D 60.
24. 1936 O W N 1090=1936 R D 531. |
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interest in cases in which no such interest was allowed in the original decree. This case has been followed in a subsequent decision of the same court in *Gauri Shankar v. Ganga Baksh*²⁵. In cases where the decree is framed before the Act, but an order for the grant of instalments is passed under Section 5 the court is bound to reduce future interest at the rate allowed by Section 4²⁶.

"Any order for grant of instalment."—The Allahabad High Court and the Chief Court of Oudh have differed with respect to the interpretation of these words. The Chief Court of Oudh in *Kailash Kuar v. Amarnath*²⁷, held that these words should be confined in their application to orders passed under Section 3. This case has been referred with approval in a subsequent decision of the same court²⁸.

The Allahabad High Court in *Lala Manmohan Das v. Syed Izhar Husain*²⁹, dissented from the view taken by the Chief Court of Oudh and held that these words were very wide and referred to any such order passed either under Section 3 or Section 5 of the U.P. Agriculturists' Relief Act. This view has been relied upon in a subsequent decision in *Gur Charan Prasad v. Ali Sajjad*³⁰. The latter decision has overruled the decision of a single judge of the Allahabad High Court in *Manno Mal v. Moti Lal*³¹.

The result of this controversy is that according to the Allahabad High Court view future interest in any decree passed either under Sections 3, 4, or 5, must be the rate fixed under Section 4 (2) and once an order for instalment is passed, maximum rates should be those mentioned in different notifications issued under Section 4, while according to the Chief Court view future interest, though subject to reduction under Section 30 according to the rates specified in Schedule III is not liable to further modification according to rates notified by Government under Section 4 (2) of the Act.

Amendment of the decree—extent of.—See *Mukat Lal v. Raghuraj Singh*³².

5. Power to fix instalments after the passing of decrees.—(1) Notwithstanding anything contained in the Code of Civil Procedure, 1908, the Court shall, unless for reasons to be recorded it directs otherwise, at any time, on the application of the judgment-debtor and after notice to the decree-holder, direct that any decree for money or preliminary decree for sale or foreclosure passed by it or by any court whose business has been transferred to it against an agriculturist, whether before or after this Act comes into force, shall be converted into a decree for payment by instalments drawn up in such terms as it thinks fit in accordance with the provisions of Section 3 :

Provided that any final decree for sale which has not been fully satisfied, passed before this Act comes into force, shall, notwithstanding anything contained in the Code of Civil Procedure, 1908, be revisable in the same manner and to the same extent as the preliminary decree for sale or foreclosure passed against an agriculturist.

(2) If, on the application of the judgment-debtor, the Court refuses to grant instalments, or grants a number or period of instalments which the judgment-debtor considers inadequate, its order shall be appealable to the court to which the court passing the order is immediately subordinate, and the decision of the appellate court shall be final.

Legislative changes.—Repealed by Section 27 (1) of U. P. Act, XIII of 1940, made by the Governor in exercise of the powers assumed by him under Section 93 of the G. of I. Act, 1935, except in its application to advances made before the first day of June, 1940 not being loans as defined in that Act.

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| 25. 1936 O W N 130=1936 R D 75. | 28. <i>Shiam Behari v. Kishen Das Ram</i> ,
1936 O W N 1224=1936 R D 530. |
| 26. 1936 O W N 471=1936 Oudh, 334. | 29. 1937 A 449=1937 A L J 3/0. |
| 27. <i>Unnao Commercial Bank v. Hari Saran Dass</i> , 1951 A 641=1951 A L J 421. | 30. 1938 A L J 991. |
| | 31. 1937 A 645=1937 A L J 688. |
| | 32. 1939 A L J 1043=1939 R D. |

Court—meaning of.—“Court” as used in that section means the court of first instance and not the court which may have passed either in appeal or revision, the ultimate decree in the case. In interpreting the words “the court which passed the decree” used in Section 30, the Chief Court of Oudh held that an application under Section 30 (2) Agriculturists’ Relief Act for reduction of the amount of interest awarded in a decree modified on appeal lies in the trial court rather than in the court of appeal ³³. The same view has been taken by a Full Bench of the Allahabad High Court in *Chatarbhuj v. Mauji Ram* ³⁴. “Court,” however means the Civil Court and not the Revenue Court. Therefore the court to which an application should be made by a judgment-debtor for the fixation of instalments is the Civil Court and not a Revenue Court even though the decree, which is sought to be amended is a decree of the Revenue Court. It is only under Section 10 and for the purposes of applications under Chapter III that the word “court” includes the Collector.

Who can apply under the section?—The section entitles a ‘judgment-debtor’ to apply that the decree passed against an agriculturist may be converted into a decree for instalment. The word ‘judgment-debtor’ has been construed to mean a person liable for payment of money for the time-being or in other words to include the legal representatives and transferees of the original judgment-debtor. It is not necessary that the transferee of the original judgment debtor should also be an agriculturist. All that is necessary is that the decree should have been passed against an agriculturist. Where a decree has been passed against a person who was an agriculturist both at the time of the loan as well as of the date of the suit, the transferee is entitled to the benefit of the section irrespective of the consideration whether he is an agriculturist or not ³⁵. The interpretation appears to be in conflict with Section 8 of the U.P. Agriculturists’ Relief Act. On this point there is a conflict of views between the Allahabad High Court and the Chief Court of Oudh. The Chief Court is of the view that the reasonable consideration would be to require proof about the original deb or being an agriculturist at the time of the advance of the loan, and about his successor or legal representative against whom the decree is passed satisfying that condition of the date of the suit, *ibid*. The Allahabad High Court on the other hand is of opinion that in order that the transferee be entitled to the benefits of Section 5, he must prove that not only the mortgagor, but he himself was an agriculturist on the date of the loan as well as on the date of the suit ³⁶.

Some judgment-debtors not joining the application—effect.—An amendment made in a decree under Sections 5 and 30, U.P. Agriculturists’ Relief Act, enures for the benefit of all the judgment-debtors even though some of them do not join in the application ³⁷. This however is not true in the case of Joint Hindu family. It is only the karta in whose name the property held by the family is recorded who can be regarded as an agriculturist for the purposes of this section. If he is held not to be an agriculturist the other members of the family cannot, by reason of Explanation II to Section 2 (2) be regarded as agriculturist for the purposes of this section ³⁸.

Decree for money—meaning of.—See notes under Section 3, U.P. Agriculturists’ Relief Act.

Instalments—Principles governing grant of.—(1) The period for the payment of instalment to start from the date of the new decree and not from the date of the old decree ³⁹.

(2) Instalments with respect to the amount remaining due are to be granted and not with respect to the original decretal amount ⁴⁰.

(3) Instalments may be granted at any time before the sale of the property in execution of a decree and in full satisfaction thereof is confirmed, as the decree cannot be said to have been fully satisfied within the meaning of the proviso to Section ⁴¹.

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| 33. <i>Pirtipal Singh v. Raghubar Dayal Shukla</i> 1935 O W N 1094=1936 R D 212. | 34. 1933 A L J 678=1938 A 456. | 35. <i>The Allahabad Bank v. Butay Krishna</i> , 1937 O W N 932=1937 R D 473. | 36. <i>Ram Ghulam v. Bandu Singh</i> , 1939 A L J 465. | 37. <i>The Allahabad Bank Limited v. Butay Krishna</i> , Supra. | 38. <i>The Allahabad Bank Limited v. Prakash Nath</i> , 1937 A L J 970. | 39. <i>Muzaffarnagar Bank v. Fasta</i> , 1937 A L J 1134= 937 R D 502. | 40. <i>Ram Nath v. Shiam Lal</i> , 1939 A 502=1939 A L J 356. | 41. <i>Girdhari Lal v. Mohammad Ihsrat</i> , 1937 R D 570. |
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(4) Execution of decree to be stayed pending the disposal of an application for instalment⁴².

(5) Instalments may be granted even after the expiry of the period of twelve years prescribed under Section 48 C.P.C.⁴³, which further lays down that the amendment would start a fresh period of limitation.

(6) Instalments may be granted even if no instalments were asked under Section 3 when the suit was decided after the commencement of the Act⁴⁴.

(7) No instalments can be granted in a decree for costs⁴⁵.

(8) Instalments can be granted in a decree in which instalments were granted before the commencement of the Act⁴⁶.

(9) Instalments having once been granted under Section 5, U. P. Agriculturists' Relief Act, the court has no jurisdiction to entertain a second application for instalments⁴⁷.

(10) Instalment can be granted even in cases where there has been a compromise and the compromise decree provides that the debtor was to execute a sale deed in lieu of the decretal amount in favour of the creditor⁴⁸.

Instalment application—Effect on execution.—There is nothing in the section as to the effect of an application. It means that the application by itself cannot be sufficient to stay the execution of the decree, unless the court entertaining the application passes an order to that effect. The view taken by the Allahabad High Court is that the sale must be set aside on conversion of the decree into an instalment decree⁴⁹. If an application is made for instalments pending an application for execution, sale should be stayed pending the decision of the application⁵⁰. Order confirming a sale after the order for stay of confirmation was communicated to the court, is without jurisdiction and confers no rights on the auction purchaser⁵¹.

Final decree for foreclosure if amendable.—This section applies only to subsisting decrees; once a decree has been satisfied, there is no liability on the judgment-debtor for its payment. In dealing with a case under Section 8, U. P. Debt Redemption Act, the Chief Court of Oudh held that after the final decree for foreclosure this liability is extinguished, and as such no application for amendment is maintainable⁵².

Appeal.—Section 5 (2) gives the judgment-debtor a right to appeal in cases where the court refuses to grant instalments or grants a number or period of instalments which the judgment-debtor considers inadequate. The appeal would lie to the court to which the court passing the order is immediately subordinate⁵³. For example, an order passed by a Civil Judge is appealable to the District Judge, irrespective of the amount involved⁵⁴. Similarly for the purpose of Section 5 (2) Court of Small Causes would be deemed to be immediately subordinate to the District Judge and an appeal would lie to the court of the District Judge⁵⁵. But

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| <p>42. <i>Shyam Lal v. Ram Gopal</i>=1937 A L J 1197.</p> <p>43. <i>Ganesh Singh v. Ram Sarup</i>, 19 7 O W N 90.=1937 Oudh 477; <i>Rana Umanath Baksh Singh v. Sheo Prasad Gupta</i>, 1944 O W N 247; <i>Rana Umarnath Baksh Singh v. The Allahabad Bank Limited</i>, 1945 O W N 51.</p> <p>44. <i>Shri Nath v. Puran Lal</i>, 1941 R D 1079.</p> <p>45. <i>Sri Maha Kalji v. Kali Prasad</i>, 1933 R D 104.</p> <p>46. <i>Shiam Behari v. Krishna Das Ram</i>, 1936 R D 590; <i>Puran Chand v. Bhagwan Prasad</i>, 1937 R D 153.</p> <p>47. <i>Umrao Ali v. Rup Singh</i>, 1937 A L J 1291=1938 R D 90.</p> <p>48. <i>Raghuraj Singh v. Hari Krishen Dass</i>, 1944 O W N 331 (P C).</p> <p>49. <i>Zamin Ali v. Parsotami</i>, 1938 A L J 575=1938 R D 588.</p> | <p>50. <i>Shyam Lal v. Ram Gopal</i>=1937 A L J 1197=1938 R D 87.</p> <p>51. <i>Radhey Mal v. Mumtaz Ali</i>=1937 A L J 723=1937 R D 365. See also <i>Magalya Ram v. Talla Ram</i>, 1936 R D 296.</p> <p>52. <i>Harcharan Singh v. Mohammad Husain Khan</i>, 1943 O W N 71 (C.C.). See also <i>Raghuraj v. Hari Krishen Das</i>, 71 A 76=1944 O W N 331 =1944 A L J 162=1944 A C 35.</p> <p>53. <i>Umrao Ali v. Rup Singh</i>, 1937 A L J 1291=1938 R D 90; <i>Tajpal Singh v. Ganga Sahai</i>, 19 2 A 808.</p> <p>54. <i>Bireswar Das v. Uma Kant</i>, 1937 A L J 363; <i>Raghuraj Singh v. Shaiker Sahai</i>, 1936 Oudh 321.</p> <p>55. <i>Sahhad Ali v. Sikre Brothers</i>, 1937 O W N 1071=1937 Oudh 523; <i>Kedar Nath v. Sheo Lal</i>, 1937 A L J 1004; <i>Baldeo Narain v. Debi Din</i>, 1937 O W N 589=1937 Oudh 358=1937 R D 321.</p> |
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no appeal would lie under this section if no prayer for amendment of decree under Section 5 (1) is made in the trial court⁵⁰. An order under Section 5 (1) is appealable only under Section 5 (2) and not under Section 23, U. P. Agriculturists' Relief Act⁵¹.

Second Appeal or Revision.—According to Section 5 (2) the order of the appellate court shall be final. This means that no second appeal is maintainable⁵², nor a revision is maintainable⁵³. This however does not apply to a decree-holder. In *Girdhari Lal v. Mohammad Ishrat Ali*⁵⁴, one of the Judges of Chief Court held that the decree-holder had, neither a right of appeal nor of revision. But this view was dissented from in *Raghuraj Singh v. Hari Kishen Das*⁵⁵, and a right of revision has been given to the decree-holder. The same view has been taken by the Allahabad High Court in *Manmohan Das v. Izhar Husain*⁵⁶.

Court fee in Appeal.—A court fee of annas fifteen is sufficient. An order under Section 5 (1), U. P. Agriculturists' Relief Act, has not by itself the force of a decree. The order is one passed in the suit itself and not apart from it. On an appeal under Section 5 (2) against an order passed under Section 5 (1) an *ad valorem* court fee is not payable⁵⁷.

Transfer of business of a court—meaning.—These words refer to instances where one court has caused to exist; and the entire business of that court has been taken over by another court. It does not refer to the case where one decree has been transferred to another court for execution⁵⁸.

6. Limit to the execution of decree by sale of agricultural produce.—In no case shall a decree passed by a civil court against an agriculturist be executed by attachment or sale of agricultural produce after a period of four years calculated from the date of the filing of the first application for execution :

Provided that the period during which more than one-quarter of the holding of the judgment-debtor has been sub-let or during which the judgment-debtor has suffered from an agricultural calamity shall be excluded from the period of four years mentioned in this section :

Provided also that, when instalments are granted under either Section 3 or Section 5, the period of execution allowed by this section shall, in respect of each instalment, date from the day on which the instalment falls due.

Legislative changes.—Repealed by Section 27 (1) of U. P. Act, XIII of 1940, made by the Governor in exercise of the powers assumed by him under Section 93 of the G. of I. Act, 1935, except in its application to advances made before the first day of June, 1940, not being loans as defined in that Act.

Decree—meaning of.—The word "decree" as used in this section applies to all the decrees whether passed before or after the commencement of the Act⁵⁹.

Agricultural Produce—has not been defined in this Act. It has been defined in Section 2 (2) of the U. P. Debt Redemption Act.

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| <p>56. <i>Nihal Singh v. Durwan Narain Singh</i>, 1937 O W N 594=1937 R D 324.</p> <p>57. <i>Suraj Narain Singh v. Kedar Prasad</i>, 1938 A 119=1938 R D 146.</p> <p>58. <i>Kailash Chandra v. Radhey Shiam</i>, 1937 A L J 684; <i>Ram Nath v. Shyam Lal</i>, 1939 A 502 = 939 A L J 358.</p> <p>59. <i>Nihal Singh v. Ganesh Das Ram Gopal</i>, 1936 O W N 1158; <i>Mahipal Singh v. Kanta Prasad</i>, 1939 O W N 970; <i>Shanti Scroop v. Mohammad Abdul Haq</i>, 1940 O W N 169.</p> <p>60. 1937 O W N 1153.</p> | <p>61. 1933 O W N 331=1938 R D 405.</p> <p>62. 1937 A L J 370=1937 R D 251; See also <i>Shyam Lal v. Ram Gopal</i>, 1938 R D 87 and <i>Ram Nath v. Shyam Lal</i>, 1938 A L J 358=1939 A 502, also <i>Shah Chaturbhuj v. Shah Maiji Ram</i>, 1938 A W R (H C) 437.</p> <p>63. <i>Ram Prasad v. Triloki Nath</i>, 1938 R D 22.</p> <p>64. <i>Adjai Coal Co. Ltd v. Lakhi Nurain</i>, 1937 A L J 397=1937 R D 194.</p> <p>65. <i>Kalyan Singh v. Ajodhya Prasad</i>, 1938 A L J 724=1938 A 502.</p> <p>66. 1938 A 502=1938 A L J 724.</p> |
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First application for execution—meaning.—It is not clear whether the application for execution should have been made before or after the commencement of the Act. In interpreting these words in *Kalyan Singh v. Ajodhia Prasad*⁶⁶ a Division Bench of the Allahabad High Court in a well reasoned judgment held that as the section did not interfere with any vested right, and related only to procedure it had retrospective effect and the words "first application for execution" applied to the first application for execution made before or after the commencement of the Act.

Agricultural produce, if attachable before judgment.—This is prohibited by Order 33, rule 12 of the Code of Civil Procedure, which lays down that the plaintiff shall not be authorized under Order 38 to apply for the attachment of any agricultural produce in the possession of an agriculturist, or to empower the Court to order the attachment or production of such produce.

Code of Civil Procedure and Agricultural Produce.—The provisions of the Code of Civil Procedure dealing with agricultural produce are: Section 61, Order 21, Rules 44, 45 and 74 and Order 38, Rule 12. Section 61 deals with the partial exemption of agricultural produce from liability to attachment or sale in execution of a decree, and lays down that the State Government may by general or special order published in the Official Gazette declare that such portion of agricultural produce or any class of agricultural produce as may appear to the State Government to be necessary for the purpose of providing until the next harvest for the due cultivation of the land and for the support of the judgment-debtor and his family shall be exempted. The provisions of this Act now absolutely exempt one-third of the agricultural produce from attachment in execution of a decree based on a loan.

7. Forum of suits against agriculturists.—Notwithstanding anything contained in any other enactment for the time being in force, every suit for recovering an unsecured loan in which the defendant, or, where there are several defendants, any of the defendants, is an agriculturist, shall be instituted and tried in a court within the local limits of whose jurisdiction—

- (a) the agriculturist defendant, or any of the agriculturist defendants, where there are more than one such defendants, actually and voluntarily resides ; or
- (b) in case the agriculturist defendant, or all the agriculturist defendants, reside outside the limits of the [Uttar Pradesh]—
 - (1) the holding or the landed property of the agriculturist defendant, or any of them, if there are more than one such defendants, is situate ; and
 - (2) if the agriculturist defendant or none of the agriculturist defendants has a holding or landed property, the agriculturist defendant or any of them, if there are more than one such defendants, carries on the profession by virtue of which he is classed as an agriculturist.

Legislative changes.—Repealed by Section 27(1) of U. P. Act, XIII of 1940, made by the Governor in exercise of the powers assumed by him under Section 93 of the G. of I. Act, 1935, except in its application to mortgages made before the commencement of that Act.

Scope of Section.—Sections 15 to 21 of Code of Civil Procedure give the place of suing, and in the absence of Section 7 of this Act, the suit should have been filed according to the provisions of the Code of Civil Procedure. This nullifies the effect of those provisions and the forum of suits under the Act for the recovery of unsecured loan shall be determined by this section. This, however, would not apply to suits outside U. P.⁶⁷. The laws made by the local legislature of one State cannot affect the rights in lands situate outside the territories for the time being constituting that State. The U. P. Agriculturists' Relief Act affects and is intended to affect substantive

rights. Hence a mortgagor owning property in U. P. as well as in another State who has mortgaged properties situate in both the States under one deed in lieu of a single advance is not entitled to take advantage of the provisions of Section 33, Agriculturists' Relief Act passed by the Govt. of U. P.⁶⁸.

Secured Loan—Effect.—This section deals with suits based on unsecured loans and is not concerned with secured loans. "Loan" has been defined in Section 2 (10) clause (a) while secured loan is defined in clause (b) and unsecured loan in clause (c). There is no section in the U. P. Agriculturists' Relief Act fixing the forum of suits based on secured loans, and therefore the ordinary law contained in the Code of Civil Procedure would apply. Thus a suit by a plaintiff, who paid off the prior mortgagee and claimed subrogation was held to be outside the scope of the section, which applied only to unsecured loan⁶⁹.

Suits outside the scope of the section—Instances—(1) Suit for the price of goods purchased on credit by an agriculturist⁷⁰.

(2) Suits on Bahi khata account for goods purchased by the agriculturist through the agency of the plaintiff as commission agent⁷¹.

Holding—meaning of.—For the definition of holding see Section 3 (7) of the U. P. Tenancy Act :

"Holding" means a parcel or parcels of land held under one lease, engagement or grant, or in the absence of such lease, engagement or grant under one tenure and in the case of a Thekadar includes the Theka area.

Executing Court—Plea of jurisdiction if maintainable.—The executing court cannot entertain such a plea⁷² though it may be competent to do so, when the suit having been decreed *ex parte* is later restored to file⁷³.

Section 14, Limitation Act.—If the creditor files a suit in a wrong court under the provisions of the Code of Civil Procedure, and the plaint is returned under this section, the creditor is entitled to the benefits of Section 14 of the Limitation Act⁷⁴.

Effect of the section on pending suits.—The words "shall be instituted and tried" mean that a court cannot try the suit even though it was instituted before the commencement of the Act⁷⁵.

8. Change in the status of an agriculturist.—(1) No person shall be deemed to be an agriculturist for the purposes of this chapter, unless he was an agriculturist both at the time of the advance of the loan as well as at the date of the suit :

Provided that, if a person has a subsisting interest in land, but, by reason of a temporary transfer or for any other similar reason, does not for the time being pay any rent or revenue in respect thereof, he will not merely by reason of such non-payment cease to be an agriculturist.

(2) For the purposes of Sections 3, 5 and 6 any change in the status of the defendant subsequent to the date of the suit in which the decree was passed shall be ignored.

- 68. *Hoji Shaikh Wahiduddin v. Babu Makhan Lal*, 1938 A 564. See also *Hari Prasad v. Badri Narain Prasad*, 1943 A L W 542 and *Shiam Lal v. Bankey Lal Nanhey Mal*, 1943 A L W 540.
- 69. *Jagmohan Das v. Parshotam Das*, 1940 A L J 90=1940 A 207.
- 70. *Nihal Singh v. Ganesh Dass Ram Gopal*, 1936 R D 580; *Khincha Mal Hart Kishan Dass v. Khub Ram Munna Lal*, 1937 A L J 766.
- 71. *Sukhanand Mathura Prasad v. Ram Gopal Girja Shankar*, 1940 A L I

- 1 0=1940 A 336.
- 72. *Birjmohan Das v. Musammat Piari*, 1937 R D 355=1937 A L J 720.
- 73. *Jamuna Prasad v. Bhawani Dayal*, 1937 A W R 601.
- 74. *Ahmad v. Ram Chandra*, 1937 A W R 176=1937 R D 113; *Abdullah v. Tribhuwan Dutt Singh*, 1937 A W R 3.
- 75. *Mahabir Prasad v. Sitla Prasad*, 1937 A I J 686; *Chunni Lal v. Ajodhia Prasad*, 1937 A L J 1235. See also *Gulzari Singh v. Ram Adhin*, 1938 RD 723.

Legislative changes.—Repealed by Section 27 (1) of U. P. Act, XIII of 1940, made by Governor in exercise of the powers assumed by him under Section 93 of the G. of I. Act, 1935, except in its application to advances made before the first day of June, 1940, not being loans as defined in that Act.

Person if includes legal representatives.—The language of the section would seem to read as if the same person was referred, and required that the person referred to should have been an agriculturist at the time of the advance of the loan as well as at the date of the suit. But it would be impossible to apply the section in that sense in cases in which the original debtor is dead or has ceased to have any interest in the mortgaged property before the institution of the suit. The reasonable construction would be to require proof about the original debtor being an agriculturist at the time of the advance of the loan, and about his successor or legal representative against whom the decree is passed satisfying that condition at the date of the suit⁷⁶.

Transferee—Non-agriculturist—Effect.—On this point there was difference in the views of the Allahabad High Court and the Chief Court of Oudh. The Allahabad High Court was of opinion that the transferee must fulfil the conditions of the section that he was an agriculturist at the time of the advance of the loan to the original debtor and is an agriculturist at the date of the suit⁷⁷. The Chief Court of Oudh did not agree with this view and held that it is not necessary that the transferee should also be an agriculturist. All that is necessary is that the decree should have been passed against an agriculturist⁷⁸.

Subsisting interest in land.—It is an elementary proposition of jurisprudence that dominion (ownership) is an aggregate of component rights such as the right of actual possession, the right of enjoying the usufruct of land, the power of sale⁷⁹. Absolute ownership or dominion is a right over a determinate thing indefinite in point of user, unrestricted in point of disposition and unlimited in point of duration. Any one or more of the subordinate elements of ownership, such as a right of possession or user, may be granted out while the residuary right of ownership called by the Romans *nuda proprietate* remains unimpaired. The elements of the right which may thus be disposed of without interference with the right itself—in other words, which may be granted to one person over an object of which another continues to be the owner—are known as *jura in re aliena*⁸⁰. The agriculturist may dispose off the elements of the right of ownership in land, but as long as the right itself remains the agriculturist will be deemed to have a subsisting interest in land.

CHAPTER III

Mortgages and their redemption

9. Form of possessory mortgage.—Notwithstanding anything contained in the Transfer of Property Act, 1882, or any contract to the contrary, no mortgage of land or grove by an agriculturist made after the commencement of this Act shall be valid if, under the terms of such mortgage, possession of the mortgaged land or grove is delivered to the mortgagee, unless the mortgagee is authorized to retain such possession and to receive the rents and profits of such land or grove both in lieu of interest and towards payment of the principal, on condition that after the expiry of a fixed term not exceeding twenty years, the mortgaged land or grove shall be re-delivered to the mortgagor and the mortgage debt shall be deemed to have been discharged.

Explanation.—(1) For the purposes of this section "land" means and includes land which forms a mahal or a share or a portion of a mahal or specified plots in a mahal.

76. *The Allahabad Bank v. Butay Krishna*, 1937 O W N 952; *Ram Ghulam v. Bandhu Singh*, 1936 A L J 501=1936 A 449.
77. *Ram Ghulam v. Bandhu Singh*, 1936 A L J 501=1936 A 449.

78. *Allahabad Bank v. Butay Krishna*, 1937 O W N 952=1937 R D 473.
79. *Inder Sen v. Naubat Singh*, 7 A 513.
80. *Gopal Pandey v. Parsotam Das*, 5 A 121 at 131.

Explanation.—(2) Nothing in this section shall be construed to confer a right of effecting usufructuary mortgage of land on persons who do not possess transferable rights in such land.

Legislative changes.—Repealed by Section 27 (1) of U. P. Act, XIII of 1940, made by the Governor in exercise of the power assumed by him under Section 93 of the G. of I. Act, 1935, except in its applications to mortgages made before the commencement of that Act.

Analogous Law.—Section 13 of the Regulation of Agricultural Credit Act, XIV of 1940.

10. Jurisdiction of Collector under this chapter.—Applications under this chapter shall, if the principal money secured does not exceed Rs. 500, be brought before the Collector, and the word "court" in this chapter shall in such cases include the "Collector."

Legislative changes.—Repealed by Section 27 (1) of U. P. Act, XIII of 1940, made by the Governor in exercise of the powers assumed by him under Section 93 of the G. of I. Act, 1935, except in its application to advances made before the first day of June, 1940 not being loans as defined in that Act.

Assistant Collectors—Powers of.—Section 22 of the Act empowers a Collector to transfer any proceedings under this chapter to any Assistant Collector empowered by the State Government to exercise powers of a Collector under this chapter. Rule 3 framed by the Government under Section 22 provides that, the powers of a Collector are conferred on all Assistant Collectors of first class who are in charge of sub-divisions or who have exercised first class powers for more than five years. The court will be regarded as a Civil Court⁸¹. It will have power to decide all questions which may arise before it relating to proprietary title or otherwise without referring them to the Civil Court⁸².

Jurisdiction.—If a mortgagor applies for redemption of only one mortgage, it is the principal sum under that mortgage that will determine jurisdiction. He cannot be compelled to sue for a deed of further charge and the money due under that deed must be ignored in determining jurisdiction. If the mortgagor sues for redemption of more mortgages than one, jurisdiction will be determined by the sum total of the principal of all mortgages⁸³. In cases filed before the Civil Court if a question of Tenancy rights is raised, it must be referred to the revenue court under Section 288, U. P. Tenancy Act⁸⁴.

Appeal.—The decision of a Collector or an Assistant Collector is appealable to the District Judge—(Section 23).

Two mortgages in one deed—Effect.—Mortgage for Rs. 599 in favour of *S* and *B* by same deed—Certain properties in two villages mortgaged to each of the mortgagees separately described, consideration paid by each specified—Deed created two distinct and separate mortgages for Rs. 300 and 299 and the application under Section 12 maintainable in Collector's Court⁸⁵.

Principal money—meaning.—has reference to the amount secured under a single transaction. It does not refer to the total or aggregate mortgage-money that may be secured under a number of deeds⁸⁶. It also means the amount originally borrowed and not the amount remaining due on the date of the application⁸⁷.

Where there is a deed of further charge and the second advance is tacked to the original mortgage with a proviso that the first mortgage cannot be redeemed without redeeming the second mortgage, the two deeds constitute one transaction⁸⁸.

A single application to redeem two or more mortgages is maintainable⁸⁹.

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| 81. <i>Ram Autar Misra v. Mahabir Shukul</i> , 1942 O 458.
82. <i>Bhagwan Dut v. Jokhan Saliun</i> , 1952 A 84.
83. <i>Ram Lakhan Misra v. Bishesher Misr</i> , 1948 O 214 (A B). But see <i>Govind Rao v. Gauri Chander</i> , 1949 A W R 147; <i>Pt. Ambika Upadhyaya v. Pandit Nakched Upadhyaya</i> , 1954 A L J 653 (F B).
84. <i>Chauthi Raj v. Mst. Sumitra Devi</i> , 1952 A L J 170. | 85. <i>Mahabir v. Ram Lal</i> , 1942 Oudh 76; <i>Raja Ran v. Mushtaq Husain</i> , 1942 O 391.
86. <i>Sukhdeo v. Baldeo</i> , 1949 A W R 147.
87. <i>Moghu Singh v. Keshev Prasad Singh</i> , 1951 A L J 729.
88. <i>Govind Rao v. Gauri Shanker</i> , 1949 A W R 147=1949 A L J 169.
89. <i>Phoolmati v. Nich Kunooji Singh</i> , 1949 A L J 365. |
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11. Ejectment of mortgagee remaining in possession after term.—If a mortgagee holding possession under a mortgage made after the commencement of this Act by an agriculturist, remains in possession after the expiry of the period for which he is entitled to hold and on the expiry of which he is bound to deliver back the mortgaged property without any payment by the mortgagor, the Court shall, on the application of the person entitled to possession, direct that the mortgage be redeemed, eject such mortgagee, and place the person so entitled in possession, and may also direct the mortgagee to pay such compensation to the person found to have been wrongly kept out of possession as it may deem reasonable.

Legislative changes.—Repealed by Section 27 (1) of U. P. Act, XIII of 1940, made by the Governor in exercise of the powers assumed by him under Section 93 of the G. of I. Act, 1935 except in its application to advances made before the first day of June, 1940, not being loans as defined in that Act.

Scope.—The mortgages covered by the provisions of this section are those made after the commencement of the Act i. e. 30th April, 1936 (*vide* Notification No. 328, Revenue Department published in U. P. Gazette, dated 27th April, 1935, Part VIII, page 100).

12. Application for redemption.—Notwithstanding anything contained in Section 83 of the Transfer of Property Act, 1882, or any contract to the contrary, an agriculturist who has made a mortgage either before or after the passing of this Act, or any other person entitled to institute a suit for redemption of the mortgage, may, at any time after the principal money has become due, and, before a suit for redemption is barred, file an application before the Court within whose jurisdiction the mortgaged property or any part of it is situate, in such form and giving such particulars as the [State Government] may by rule prescribe, and praying for an order directing that the mortgage be redeemed, and, where the mortgage is with possession, that he be put in possession of the mortgaged property. The application shall be duly verified in the manner prescribed by law for the verification of plaints and shall state the sum which the applicant declares to the best of his belief to be due under the mortgage. The applicant shall at the same time deposit such sum with the Court.

Explanation.—For the purposes of Sections 11 and 12 the word "property" includes grove.

Legislative changes.—Repealed by Section 27 (1) of U. P. Act, XIII of 1940, except in its application to advances made before the first day of June, 1940, not being loans as defined in that Act.

Scope.—This section is not confined to cases where mortgaged property consists only of agricultural land or grove but it applies to mortgages of all kinds of property and not necessarily agricultural land or grove made by agriculturists.⁹⁰

Any contract to the contrary—meaning.—These words used in Section 12 refer to the right of redemption existing in favour of a mortgagor which cannot be hampered or thwarted by any contract to the contrary imposing any clog on such right. They have no reference whatever to the amount which the mortgagor may be liable to pay in respect of the property mortgaged under subsequent deeds⁹¹. But before an applicant can obtain any relief he is bound to comply with the requirements of Section 24⁹².

Agriculturist—meaning of.—Agriculturist has been defined in Section 2 (2), and

90. *Pandit Gopi Nath v. Pandit Bhanu Shanker Tajnik* 1954 A L J 336.
 91. *Murli Shukul v. Laita Singh*, 1943 Oudh 300.

92. *Matloob Ali Khan v. Nabi Rasool Khan*, 1947 A 407. See also *Manohar Lal v. Banaras Bank*, 1947 A 245.

as the commentary under that section would show, has been divided under two heads. This section applies only to such agriculturists on whom limitations of land revenue, local rates and areas have been imposed by Section 2 (2).

Any other person entitle to redeem—meaning.—In the context in which these words have been used it would seem to suggest that any other person may not be an agriculturist. But this suggestion would not be correct in view of Section 24 of the U. P. Agriculturists' Relief Act, which requires that the applicant must be an agriculturist on the date of the application; he has also to show that the mortgagor was an agriculturist on the date of execution of mortgage deed ⁹³; Section 91, Transfer of Property Act gives a list of persons, who are entitled to redeem or institute a suit for redemption. This list is quoted below for facility of reference :—

- (1) The mortgagor, where two persons borrow on the basis of a mortgage of property belonging to one only, the other being liable to pay the mortgage debt is entitled to apply under Section 12 ⁹⁴.
- (2) Any person (other than the mortgagee of the interest sought to be redeemed having any interest in or charge upon the right to redeem the same.
- (3) Any surety for the payment of the mortgage-debt or any part thereof.
- (4) A creditor of the mortgagor who has, in a suit for the administration of his estate, obtained a decree for sale of the mortgaged property.

Section 91 is not exhaustive in its enumeration of the persons who are entitled to redeem. For instance, there is no mention of the Court of Wards or the assignee of an insolvent or a trustee under a deed of arrangement for the benefit of creditors; nor is anything said of the right of Govt. to redeem an estate which has vested in it by escheat or forfeiture. It would, therefore, be necessary in every case to determine if the applicant has any interest in the right to redeem the mortgaged property. The following persons have been held to have such interest as would entitle them to redeem :—

- (a) A purchaser of the equity of redemption; even after the mortgagee has obtained a decree on the mortgage if he was not made a party by the mortgagee ⁹⁵.
- (b) A sub-mortgagee ⁹⁶.
- (c) A co-mortgagor may redeem the whole ⁹⁷.
- (d) A puisne mortgagee may redeem ⁹⁸.
- (e) A prior mortgagee who has acquired the interest of the mortgagor ⁹⁹.
- (f) A Permanent lessee of the mortgaged property ¹.
- (g) The landlord of a heritable and transferable tenancy, when the tenant dies without leaving an heir ².
- (h) A benamidar ³.
- (i) A lessee for a term of years ⁴.
- (j) An exproprietary tenant ⁵.

93. *Rameshwari Dayal v. Hari Kishen*, 1940 ALJ 203=1940 A 351.
 94. *Pandit Gopi Nath v. Pandit Bhanu Shanker Yujnik*, 1954 A L J 336.
 95. *Dharmdar v. Panchanan*, 1927 C 559; *Bhagwan Das v. Sham Das*, 23 A 429; *Ram Saran Bhagwati*, 47 A 751. See also *Nainappa v. Chidambaram*, 21 M 18 and *Periandi v. Anappa*, 7 M 4:3; *Radha Krishnan v. Hem Chandra*, 11 CWN 495; *Ram Ghulam v. Bandhu Singh*, 1936 ALJ 465.
 96. *Venkatakrayanasami v. Kuni*, 1913 MWN 03=21 IC 560; *Ram Subhag v. Nar singh* 27 A 472.
 97. *Shankar v. Bhikaji*, 1929 B 139; *Ganesh Din v. Lachman Singh*, 1924 A 147.
 98. *Tukkadan v. Mangya*, 1923 Nag.

- 49; *Kudratullah v. Kubra Begum*, 23 A 25; *Raghunandan Prasad v. Ajudhia Singh*, 1930 A 869.
 99. *Mongli v. Patti*, 1 ALJ 360; *Haean-bhai v. Umaji* 23 B 153.
 1. *Raghunandan v. Ambika*, 29 A 679; *Jugal v. Kartie*, 21 C 116; *Kalu Singh v. Hansraj*, 1925 Oudh 270; *Kokil v. Doli*, 5 CLJ 243; *Radha v. Manohar*, 6 C 317; *Paya v. Koramal*, 19 M 151.
 2. *Tulsi Ram v. Gur Dayal*, 33 A 111; *Mst. Ramkali v. Murlidhar*, 1951 A 655.
 3. *Bisudhanand v. Isri Singh*, 1921 P 21=56 1 C 599.
 4. *Tulshi Ram v. Muna Kuar*, 1937 Oudh 146.
 5. *Mohammad Husain Khan v. Hanuman*, 1918 A 392.

- (k) A trespasser, who acquires the rights of the mortgagor by adverse possession ⁶.
- (l) An attaching creditor of the equity of redemption or a purchaser in pursuance of that attachment ⁷.
- (m) A charge-holder by contract or decree ⁸.
- (n) A co-mortgagor, who redemees the mortgagee is, so far as the right of the other co-mortgagors to redeem is concerned, exactly in the same position as the original mortgagee and the other co-mortgagor can therefore apply under Section 12 of the U. P. Agriculturists' Relief Act ⁹.

Profits—Basis of calculation ¹⁰.

It is for the mortgagor to plead that the mortgagee could have realised the amounts with the exercise of ordinary diligence and yet he had failed to do so ¹¹.

Mortgage invalid—Effect.—Section 12 of the Agriculturists' Relief Act contemplates a valid mortgage as recognised by law. If there is no valid mortgage either under the deed or by prescription, a court has no jurisdiction to entertain an application under Section 12, Agriculturists' Relief Act, in respect of such a mortgage ¹². For example a statutory tenant, who had made a mortgage of his holding cannot avail himself of the provisions of Section 12 of the Agriculturists' Relief Act ¹³. The Allahabad High Court in *Ghassu v. Babu Ram* held that a usufructuary mortgage of an occupancy holding is void, but if the mortgagee has been put in possession, the mortgagor cannot recover possession of the holding, without returning the consideration which he had received ¹⁴. He should sue for possessions and not for redemption ¹⁵. A mortgage of *muafi* holdings cannot be said to be void at least as between parties to it ¹⁶. An action may be permitted in relation to occupancy holding which are not strictly legal mortgages, but which are analogous to mortgages ¹⁷.

Section 12 not applicable—Cases.—It is difficult to lay down a comprehensive list of cases, in which Section 12 of the Agriculturists' Relief Act will not be applicable. The following cases are mentioned merely by way of illustrations :—

- (1) The mortgaged property is sold and the money is left with the vendee to pay off the debts of the mortgagor, the vendee is not entitled to the benefits of Section 12 ¹⁸.
- (2) A person having no money with which to prosecute his claim executed an agreement in favour of another person, who undertakes to finance the litigation and to recoup himself by retaining half of what the courts awarded. This being merely a contract, which gave no vested rights, the other person was not entitled to redeem ¹⁹.
- (3) A reverisoner under the Hindu Law ²⁰.
- (4) A non-agriculturist or where the applicant is an agriculturist and the mortgagor was not an agriculturist at the time of the loan.

Transferee of mortgagee—liability.—The benefits under Section 12, U. P. Agriculturists' Relief Act, are available and can be claimed against the transferee of the mortgagee ²¹.

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| 6. <i>Basant Singh v. Rampal Singh</i> , 1919 Oudh 217=51 I C 985. | 13. <i>Sant Ram v. Putti Lal</i> , 1940 CWN 352=1940 Oudh 263=15 Luck. 535. |
| 7. <i>Fatima Begum v. Bansidhar</i> , 1932 ALJ 289. | 14. 1944 A L J=1944 A 25=1944 RD 65. |
| 8. <i>Roshan Singh v. Balwant</i> , 22 A 191 PC. | 15. <i>Mahabal Singh v. Ram Raj</i> , 1950 A 604=1950 A W R 624. |
| 9. <i>Sanai Pasi v. Hira Lal</i> , 1944 OWN 109 HC. | 16. <i>Luchman v. Ali Bux</i> , 1947 OWN 362=1947 O 228. |
| 10. <i>Kalpur Ahir v. Mukat Nath</i> , 1948 OWN 419. <i>Nand Kumar Lal v. Kuber Lal</i> , 1950 A 192; <i>Bhogwati Prasad v. Mst. Shitali</i> , 1953 A 241. | 17. <i>Ramadhir Rai v. Oudh Nath Rai</i> , 1948 A 308. |
| 11. <i>Tejpal Singh v. Ganga Sahai</i> , 1952 A 808. | 18. <i>Pirthi Nath v. R.j Dutt</i> , 1944 RD 189. |
| 12. <i>Babu v. Mahadeo</i> 1943 R D 565=1943 A L J 567=1944 A 41; <i>Shanti Prasad Shukla v. Bashchia Devi</i> , 1940 O A 43. <i>Dhanraji v. Mubarak</i> , 1950 AWR 476. | 19. <i>Indar Singh v. Kesri Singh</i> , 14 OC 139; <i>Hasan Bandi v. Barati Lal</i> , 1928 Oudh 298. <i>Busan Singh v. Ranpal Singh</i> , 51 I C 985; <i>Ram Chandra v. Kallu</i> , 30 A 497. |
| | 21. 1944 A W R 115. |

Rights of third persons.—If it is proved that the mortgagee in order to defeat the rights of the mortgagor has set up a third person, it can be adjudicated upon²².

It is open to the court to consider the question whether the mortgagee has put up a fictitious person as a tenant to prevent mortgagor from obtaining possession over the mortgaged property²³. The court can enquire if the person setting up title was a creature of the mortgagee²⁴.

Non-deposit of the sum in Court—effect.—The section requires that the applicant shall state the sum which he declares to the best of his belief to be due under the mortgage, and shall deposit such sum along with his application in court. Now if the applicant believes that no sum is due his application for redemption of the usufructuary mortgage is competent even though no deposit is made along with the application. If on taking accounts, any sum is found due from the mortgagor, the court has power under Order 34, Rule 7, C. P. C. to extend the time for the payment of such sum²⁵.

It is open to the usufructuary mortgagor to ask for the recovery of possession of the mortgaged property without the payment of the mortgage-money if it has been paid up from the usufruct of the property and the period of limitation for such an application is 60 years²⁶.

Over payment of mortgage-money—effect.—Under Section 30, U. P. Agriculturists' Relief Act, even in the case of usufructuary mortgage accounts can and must be re-opened between the mortgagor and the mortgagee in spite of the fact that they might have agreed that there shall be no accounting between them. If on taking accounts it is found out that the mortgagee has been overpaid, the mortgagor is not entitled to claim a refund of the money so overpaid under Section 30 (4)²⁷. It has, however, to be borne in mind that where the terms of the mortgage provide that the usufruct was to be set off against interest, the mortgagee is not bound to keep accounts and as such cannot be penalised for failure to keep regular accounts²⁸.

Scope of Enquiry.—There is nothing in Section 12 or in the Agriculturists' Relief Act, to indicate any intention on the part of the legislature to exclude from the scope of a suit for redemption under Section 12 the enquiry as to the amount due from the mortgagor to the mortgagee, whether the debt was due under one or more than one deeds in respect of the same property. No intention can be imputed to the legislature that the mortgagee was precluded from asserting his claim against the mortgagor on deeds other than the principal deed of mortgage which alone the mortgagor chose to redeem, whether those deeds were to be regarded as independent deeds or were to be designated as deeds of further charge in respect of the same property²⁹. In proceedings under Chapter III of the Act on an application under Section 12, the court can pass a preliminary decree and is not compelled to pass a final decree³⁰. There is no statutory bar to turning a plaint in a suit as an application under Section 12³¹. It is, however, not within the jurisdiction of the court to enter into a question of a claim for waste, nor has it a jurisdiction to give a decree in favour of the mortgagor for recovery of any amount from the mortgagee³². An application under this section is for redemption and not for possession³³.

Court Fee.—An application under Section 12 is chargeable with a court fee stamp payable on ordinary petitions, i. e., As. 1/5/ only. The character of the petition

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| 22. <i>Ram Kirpal v. Bhagwati Saran</i> , 1949 A 318, But See 1949 A L J 125. | 1938 A 611. See also <i>Raja Ram v. Mushtaq Husain</i> , 18 Luck. 183. |
| 23. <i>Sm. Piari v. Ram Adhin</i> , 1953 A 472. | 28. <i>Ganga Sahai v. Tejpal Singh</i> , 1944 O W N 148 (H C.) |
| 24. <i>Jaddu Koeri v. Deep Chand Koeri</i> , 1955 A 172. | 29. <i>Murli Shukul v. Lalta Singh</i> , 1943 Oudh 300—1943 OWN 169. See also <i>Ganga Sahai v. Tejpal Singh</i> 1944 OWN 1-8 (H C.). |
| 25. <i>Iqan Husain v. Sahu Babu Ram</i> , 1939 A 88—1938 A L J 1115—1938 RD 924—179 I C 653; <i>Misri Lal v. Gajadhar</i> , 1943 OWN 347—1943 Oudh 433. <i>Mst. Ramkali v. Murlidhar</i> , 1951 A 655. | 30. <i>Mohan Kunwar v. Jamuna Sahai</i> , 1948 A L W 286. |
| 26. <i>Parasram Shukal v. Bindeshvari, Pandey</i> , 1952 ALJ 576. | 31. <i>Mohd. Mohsin v. Aminul Hasan</i> , 1947 OWN 9 (1)—1947 RD 97. |
| 27. <i>Sheo Charan Lal v. Umrao Begum</i> , | 32. <i>Suraj Bali v. Ranj Bahadur Singh</i> , 1950 A 88. |
| | 33. <i>Nabi Baksh v. Chaubay Putiu Lal</i> , 1954 A 607—1954 A L J 321 (F B) |

is not changed even if relief under Section 9 is claimed ³⁴. Section 7 of the U. P. Debt Redemption Act does not create any right of redemption independent of the provisions of the Transfer of Property Act or the Agriculturists' Relief Act.

Second Application, if barred.—An application dismissed for failure to make deposit, a second application is not barred ³⁵. So long as the right of redemption has not been extinguished a mortgagor is entitled to bring successive suits for redemptions of the same mortgage ³⁶.

Appeal and Court Fee in appeal.—See commentary under Section 23, *infra*.

Revision.—If maintainable.—See commentary under Section 23, *infra*.

13. Mortgagee to be summoned.—When the application has been duly presented and the deposit has been made, the Court shall issue a notice to the mortgagee to show cause on a day to be fixed in the notice why redemption should not be allowed.

Legislative changes.—Repealed by Section 27 (1) of U. P. Act XIII of 1940, made by the Governor in exercise of the powers assumed by him under Section 93 of the G. of I. Act, 1935, except in its application to advances made before the first day of June, 1940, not being loans as defined in that Act.

Issue and Service of Notice.—According to Section 26, U. P. Agriculturists' Relief Act, the provisions of the Code of Civil Procedure shall be followed, so far as they can be made applicable, to all proceedings under this chapter, and therefore for the issue and service of notice, the provisions of C. P. C. shall be followed.

14. Procedure when mortgagee accepts deposit.—If the mortgagee appears and accepts the deposit in full discharge of his mortgage, the Court shall order that the mortgage be redeemed, that the money deposited by the applicant be paid to the mortgagee and that the title deeds, if any, in possession or power of the mortgagee shall be deposited in Court and be delivered to the mortgagor.

Legislative changes.—Repealed by Section 27 (1) of U. P. Act XIII of 1940, made by the Governor in exercise of the powers assumed by him under Section 93 of the G. of I. Act, 1935, except in its application to mortgages made before the commencement of that Act.

Analogous Law.—Section 83, Transfer of Property Act.

15. Procedure when applicant is absent.—If on the date fixed the applicant does not appear and the mortgagee does not accept the deposit in full discharge of the mortgage, the Court shall reject the application.

Legislative changes:—Repealed by Section 27 (1) of U. P. Act XIII of 1940, made by the Governor in exercise of the powers assumed by him under Section 93 of the G. of I. Act, 1935, except in its application to mortgages made before the commencement of that Act.

Rejection of application—effect.—The rejection of an application under Section 12, U. P. Agriculturists' Relief Act will not bar a second application. Until a mortgage has been extinguished there is a repeated cause of action to sue for its redemption. It is only when it has been extinguished finally by a final decree for redemption or

34. *Sabraj Kunwar v. Aharwadin*, 1945 OWN 110 (CC)
 35. *Ram Nath Bhuj v. Ram Lal*, I L R 1946 A 610. *Loknath Misir v.*

36. *Doulta Kuar*, 1953 A 503.
Jamuna Prasad v. Harihad Baksh, 1954 A 360 = 1954 A L J 36.

when the mortgagor fails to redeem and the property is sold that the rights of a mortgagor to redeem come to an end ³⁷.

16. General procedure and procedure in contentious cases.—

If, on the date fixed or any subsequent date to which the proceedings may have been postponed, the applicant appears and the mortgagee does not appear in spite of notice, or the mortgagee appears and does not accept the money deposited by the applicant in full discharge of his mortgage or objects to redemption of the mortgage on any other ground, the Court shall hold an inquiry to determine whether the applicant is entitled to redeem the mortgage and whether the money deposited by him is sufficient. If the Court finds that the applicant is not entitled to redeem, it shall reject the application. If it finds that the applicant is entitled to redeem, but must pay a larger amount than that deposited by him, the Court shall order the applicant to deposit the balance within a fixed period. If the applicant fails to deposit the said balance, the Court shall reject his application. If the Court finds that the applicant is entitled to redeem and that the amount deposited by him was sufficient or if it was not sufficient, the applicant has deposited the balance within the time fixed, it shall order that the mortgage be redeemed, that the money deposited be paid to the mortgagee, and that the title deeds, if any, in possession or power of the mortgagee shall be deposited in Court and shall be delivered to the mortgagor.

Legislative changes.—Repealed by Section 27 (1) of U. P. Act XIII of 1940, made by the Governor in exercise of the powers assumed by him under Section 93 of the G. of J. Act, 1935, except in its application to mortgages made before the commencement of that Act.

Scope.—This section extends the provisions of Section 83 of the Transfer of Property Act. Under Section 83 if the mortgagee does not appear or raises any objection, the application is filed and the applicant has to file a regular suit for redemption. This is not necessary under Section 16 of the Agriculturists' Relief Act. The court shall hold an inquiry whether the applicant is entitled to redeem and whether the money deposited by him is sufficient. After the inquiry the court shall pass orders as provided by the section. If the court finds that the deposit made by the applicant to deposit the balance within a fixed period. It is to be noted that if the applicant is not sufficient and he must pay a larger sum, the court shall order the provisions of O. 34, R. 7, C. P. C. are applicable to proceedings under Section 12, Agriculturists' Relief Act and the court has power to extend the time fixed for making the deposit ³⁸. This view has been overruled by a Full Bench decision which lays down that the court has no power to extend the time for depositing the money. An order under the section is not analogous to one under Order 34 C. P. C. ³⁹.

17. Cessation of interest.—Where the mortgagor has deposited with the Court a sum which is accepted by the mortgagee under Section 14, or is held by the Court to be sufficient under Section 16, interest on such sum shall cease to run from the date of deposit.

Where the Court finds that a larger amount than that deposited by the mortgagor is due, and the balance is deposited by the applicant, interest shall cease to run from the date of deposit of such balance.

Legislative changes.—Repealed by Section 27 (1) of U. P. Act XIII of 1940 except in its application to mortgages made before the commencement of that Act.

37. *Bisheshwar Upadhyaya v. Jageshwar Prasad*, 1929 A 231, See also *Gopal Das v. Puttoo Lal*, 1939 O A 425; *Ram Sunder Pande v. Parasram Parwan*, 1946 O 88.

38. *Misri Lal v. Gajadhar*, 1943 O W N 347=1943 A W R (C) 83; *Ram Sunder Pande v. Parasram*, 1946 Oudh 88,
39. *Hubib Baksh v. Chaudhry Puttu Lal*, 1954 A 607,

18. After redemption the mortgagor to be put in possession, if necessary.—In all cases in which the Court orders redemption, it shall, if necessary, also put the applicant in possession of the mortgaged property, subject to any condition of the mortgage whereby a season or period of the year is fixed for surrendering possession.

Legislative changes.—Repealed by Section 27 (1) of U. P. Act XIII of 1940, made by the Governor in exercise of the powers assumed by him under Section 93 of the G. of I. Act, 1935, except in its application to mortgages made before the commencement of that Act.

19. Return of deposit.—If the application is rejected, the Court shall return to the applicant the money deposited by him.

Legislative changes.—Repealed by Section 27 (1) of U. P. Act XIII of 1940, made by Governor in exercise of the powers assumed by him under Section 93 of the G. of I. Act, 1935, except in its application to mortgagee made before the commencement of that Act.

20. Deposit not to be attached.—No sum deposited by an applicant under the provisions of this chapter shall, while in such deposit, be attached by any court or revenue officer in enforcement of any claim against the applicant other than a claim arising out of the mortgage.

Legislative changes.—Repealed by Section 27 (1) of U. P. Act XIII of 1940, made by the Governor in exercise of the powers assumed by him under Section 93 of the G. of I. Act, 1935, except in its application to mortgages made before the commencement of that Act.

21. Terms “mortgagor” and “mortgagee” to include their successors.—The words “mortgagor” and “mortgagee” in this chapter include respectively the successors-in-title of the original mortgagor and the original mortgagee.

Legislative changes.—Repealed by Section 27 (1) of U. P. Act XIII of 1940, except in its application to mortgages made before the commencement of that Act.

22. Investment of powers on Assistant Collectors and transfer of proceedings.—(1) The [State Government] may empower any Assistant Collector of the first class to exercise the powers of a Collector under this chapter.

(2) The Collector may transfer any proceedings under this Chapter—

- (a) from his own court to that of an Assistant Collector empowered under sub-section (1);
- (b) from the court of an Assistant Collector subordinate to him either to his own court or to that of any other Assistant Collector empowered under sub-section (1).

Legislative changes.—Repealed by Section 27 (1) of U.P. Act XIII of 1940, except in its application to mortgages made before the commencement of that Act.

Transfer of case:—If an Assistant Collector has been empowered by the Local Government to exercise all the powers of the Collector under Section 3 of the U.P. Agriculturists' Relief Act, he can transfer the case to the court of another Assistant Collector empowered under sub-section (1) of Section 22.⁴⁰

23. Appeals.—(1) An appeal shall lie to the District Judge from an order of a Collector or Assistant Collector passed under this chapter. An appeal shall lie from the order of a Civil Court passed under this

40. *Sheo Mangal v. Ram Charan*, 1954 A 623, Over-Ruling I L R 1951 A 581; and 1950 A W R 103.

chapter to the court to which original decrees passed by such court are ordinarily appealable, and where such decrees are appealable to more courts than one, to the court of lowest jurisdiction.

(1-A). A District Judge may—

- (i) transfer any appeal filed before him under sub-section (1) to any Additional District Judge, Civil Judge or Additional Civil Judge under his administrative control, and
- (ii) withdraw any appeal so transferred, and either hear and dispose of it himself or transfer it to a court under his administrative control competent to dispose of it.

(1-B). Any Additional District Judge, Civil Judge or Additional Civil Judge may hear and dispose of any appeal transferred to him under sub-section (1-A) in like manner as the District Judge.

Note :—Any appeal preferred under Section 23 of the Principal Act transferred to any Additional District Judge, Civil Judge or Additional Civil Judge and disposed of, and any order made by such Judge shall be deemed to be and always to have been duly and validly transferred, disposed of and made, as the case may be, as if this Act had then been in force.

(2) No appeal shall lie from an appellate order passed under this section.

Legislative changes.—Repealed by Section 27 (1) of U.P. Act XLII of 1940, except in its application to mortgages made before the commencement of that Act. Sub-section (1-A) and (1-B) of Section 23 were added by Section 2 of the U.P. Act XLII of 1948.

Appeal.—Under the provisions of this section the right of one appeal only is given. No second appeal is maintainable. Orders passed by the Collector or Assistant Collector are appealable to the District Judges, while those passed by a Civil Court to the court to which original decrees passed by such court are ordinarily appealable. In other words an appeal shall lie to District Judge from an order of a Civil Court when the valuation of the suit is Rs. 5,000 or less and to the High Court or the Chief Court if it exceeds Rs. 5,000, as the words "ordinarily appealable" indicate⁴¹. Where appeals lie to two courts, then it is the court of the lowest jurisdiction which will be entitled to entertain the appeal⁴².

Revision—If maintainable.—In Section (5) the words used are : "and the decision of the appellate court shall be final." In interpreting these words it was held in *Sardar Nihal Singh v. Ganesh Dass Ram Gopal*⁴³, that the word "final" was to be taken as absolutely final and therefore it excluded a revision also. This view was followed in a Full Bench decision in *Thakur Mahipal Singh v. Kamta Prasad*⁴⁴, where the Chief Court of Oudh dissented from the view taken by the Allahabad High Court in *Shah Chaturbhuj v. Shah Mauji Ram*⁴⁵. In this Full Bench decision the language of Section 5 (2) and Section 23 (2) was compared and was found to be different. In *Lalta Singh v. Sridhar Shukul*⁴⁶, it has been specially laid down that the words in Section 23 (2) that "no appeal shall lie from an appellate order" do not exclude a revision against the appellate order. The same view has been taken in *Amjad Husain v. Rais-un-nissa*⁴⁷ and was confirmed by a Full Bench decision in *Ram Autar Misir v. Mahabir Shukul*⁴⁸. If the court calculates profits according to its own principal method, it is material irregularity and revision would lie⁴⁹.

41. *Tajpal Singh v. Ganga Sahai*, 1952 A 808.

42. *Gaya Rai v. Lalji Rai*, 1953 A 579.

43. 1936 O W N 1158=1937 Oudh 124.

44. 1939 O W N 970.

45. 1938 A W R H C 437.

46. 1940 O W N 538=1940 Oudh 404.

47. 1941 O W N 669=1941 R D 3.7.

48. 1942 O W N 549=1942 A W R (C) 32=1942 O 558. See also *Kalbe Haider v. Ali Akbar*, 1943 A W R (C) 177.

49. *Nand Kumar v. Kubr Lal*, 1951 A 192.

Appeal and Court Fee.—In appeal *ad valorem* court fee is payable ⁵⁰. The appellant has to set up an exact sum as due to him and pay court fee thereon ⁵¹. The dismissal of the application on the finding that the transaction was not a mortgage but a sale is as much a decree as the order allowing the application and on appeal *ad valorem* court fee would be payable ⁵².

24. When application can be filed under this chapter.—(1)
No application under Section 11 or 12 shall be filed, unless—

- (a) the applicant is an “agriculturist” on the date of the application, and
- (b) the mortgagor was an “agriculturist” at the time of the mortgage.

(2) In cases in which the status of a mortgagor as “agriculturist” on the date of mortgage is at issue and no documentary evidence is forthcoming to prove it, the status of the mortgagor on that date shall be determined with reference to the entries in the record-of-rights or the annual registers prepared under the Land Revenue Act, 1901, of the year nearest to the year of mortgage for which they exist.

Legislative changes.—Repealed by Section 27(1) of U.P. Act XIII of 1940, made by the Governor in exercise of the powers assumed by him under Section 93 of the G. of I. Act, 1935, except in its application to mortgages made before the commencement of that Act.

25. Bar of suit.—No suit shall be brought in any court for any relief which can be obtained by an application under this chapter.

Legislative changes.—Repealed by Section 27 (1) of U.P. Act XIII of 1940, made by the Governor in exercise of the powers assumed by him under Section 93 of the G. of I. Act, 1935, except in its application to mortgages made before the commencement of that Act.

Suit under Section 33 if barred.—A suit under Section 33 is not a suit for any relief which can be obtained by an application under Chapter III and as such a suit for accounts and for the reduction of interest under Section 30 is not barred ⁵³,

Persons not barred :—The provisions of the chapter apply only to those agriculturists who come within Section 2 (2) Clauses (a) to (h) and therefore this bar under Section 25 applies only to such agriculturist. Other agriculturists cannot get the benefit of Chapter III and therefore this bar does not apply to them.

26. Limitation and procedure.—(1) The limitation for making an application for redemption under this chapter shall be the same as that provided in the Indian Limitation Act, 1908, for a suit for redemption.

(2) This limitation for filing appeals and for execution of orders under Chapter III shall be the same as that prescribed by law respectively for appeals under the Code of Civil Procedure, 1908, and for decrees passed by Civil Courts.

(3) The provisions of Sections 6, 7, 8, 19 and 21 of the Indian Limitation Act, 1908, shall apply to applications under this chapter and the provisions of Section 5 of the said Act shall apply to appeals under this chapter.

50. *Surjan Singh v. Mashal Singh*, 1941 O W N 789=1941 R D 443; *Anand Gir v. Ram Nazar Chaube*, 1937 A L J 1173; *Chotev v. Surat*, 1942 O A 247; *Anant v. Ram* 1937 A W R 932; *Pokhan Singh v. Radhey Lal*, 1953 A 240.

51. *Basant Lal v. Lalta Prasad*, 1946 A 301.
52. *Smt. Shanti Devi v. Mt. Kubra Begam*, 1954 A 184.
53. *Enis Begum v. Shyam Sunder La'* 1937 A L J 832=1938 A 1.

Legislative changes.—Repealed by Section 27 (1) of U. P. Act XIII of 1940, made by the Governor in exercise of the powers assumed by him under Section 93 of the G. of I. Act, 1935, except in its application to mortgages made before the commencement of that Act.

Limitation.—Under Article 148 limitation for redemption of a mortgage is 60 years. In the case of transfers by mortgagee for a valuable consideration Article 134 of the Indian Limitation Act applies and the period is 12 years from the date when the transfer becomes known to the plaintiff.

Limitation for appeals to District Judge is 30 days and to the High Court 90 days.

27. Applicability of the Code of Civil Procedure to proceedings under this chapter.—The provisions in the Code of Civil Procedure, 1908, in regard to suits shall be followed, so far as they can be made applicable, to all proceedings under this chapter, and all orders passed under this chapter shall be executed in the manner prescribed for execution of Civil Court decrees.

Legislative changes.—Repealed by Section 27 (1) of U. P. Act XIII of 1940, made by the Governor in exercise of the powers assumed by him under Section 93 of the G. of I. Act, 1935, except in its application to mortgages made before the commencement of that Act.

Order 34, Rules 5 and 9 if applicable.—The provisions of Order 34, Rules 5 and 9 do apply to the proceedings under this Chapter⁵⁴.

CHAPTER IV

Rates of Interest

28. Rate of interest on loans taken after the passing of this Act above which the debtor is not liable to pay.—(1) Notwithstanding anything in any contract to the contrary, no loan taken by an agriculturist after this Act comes into force shall bear interest at a rate higher than that notified by the [State Government] under sub-section (2) as the prevailing rate of interest for the particular class of loan at the time the loan was taken.

(2) As soon as possible after the rate of interest at which the [Central Government] will lend money to the [State Government] is announced from time to time, the [State Government] shall notify in the [official Gazette] and shall publish in such other manner as it thinks proper, the rates which shall be the prevailing rates of interest on secured and unsecured loans of the various classes mentioned in Schedule II contracted during the period such prevailing rates shall remain in force. Such prevailing rates shall come into force from such date as may be notified by the [State Government] and shall remain in force until superseded by new rates.

(3) Such prevailing rates as are referred to in sub-section (2) shall be fixed at the percentage rates specified for different classes of loans in Schedule II above the rate of interest at which the [State Government] borrows from the [Central Government].

Legislative changes.—Repealed by Section 27 (1) of U. P. Act XIII of 1940, made by the Governor in exercise of the powers assumed by him under Section 93 of the G. of I. Act, 1935, except in its application to advances made before the first day of June, 1940, not being loans as defined in that Act.

54. *Iqan Husain v. Sahu Babu Ram,*
1938 ALJ 1115=1938 RD 924;

Ram Sunder Pande v. Parasram,
1946 O 88.

Note :—For the purposes of Chapter IV it is not necessary that the defendant on the date of suit be an agriculturist ⁵⁵.

Sub-section (2)—Notification.—By Notification No. 344, dated 1st May, 1935, published in the U. P. Gazette, dated 4th May, 1935, page 200 the rate of interest was notified at 3 1/2 P. C. from 8th May, 1935, to 14th January, 1936, while from 15th January, 1936, the rate of interest has been notified at 3 1/4 P. C. *vide* Notification No. 2677-IV/1, dated 7th January, 1936, published in the U. P. Gazette, dated 11th January, 1936, Part I page 32.

Sub-section (3)—Rate of interest.—The prevailing rates shall be fixed at the percentage rates specified for different classes of loans in Schedule II above the rate of interest as fixed by the notifications. The result is that the prevailing rate of interest shall be as mentioned below :—

Amount of Loans	Secured Loans			Unsecured Loans		
	Compound P. C. P. A. with yearly rates	Simple P. C. P. A.	Compound P. C. P. A. with yearly rates	Simple P. C. P. A.		
Rs. 500 and under	..	6 1/4	8 3/4	10 3/4	13	3/4
Rs. 500 to Rs. 5,000	..	5 3/4	7 3/4	9 1/4	11	3/4
Rs. 5,001 to Rs. 20,000	..	5 1/4	6 3/4	7 3/4	9 1/4	
Over Rs. 20,000	..	4 3/4	5 3/4	6 3/4	8	1/4

29. Benefit for prompt payment of loans taken after the passing of this Act.—If an unsecured loan taken after the date on which this Act comes into force, is, if it is not a loan for a fixed term, repaid within two years of the date of the taking of the loan, or, if it is a loan for a fixed period, is repaid within such period, the debtor shall not be liable to pay interest at a rate higher than the prevailing rate of interest for a secured loan of the same class in force at the time the loan was taken.

Legislative changes.—Repealed by Section 27 (1) of U. P. Act XIII of 1940, made by the Governor in exercise of the powers assumed by him under Section 93 of the G. of I. Act, 1935, except in its application to advances made before the first day of June, 1940, not being loans as defined in that Act.

Effect of Section 39 on Section 29.—Section 29 is to be read with Section 39 of the U. P. Agriculturists' Relief Act. They should be so construed as to harmonise with each other. According to Section 39 an entry has to be made in every document of loan specifying the date by which repayment must be made to earn the benefit of Section 29, and a copy of such document must be given to the debtor. If this copy is not given no interest shall accrue ⁵⁶.

Payment in Part—Effect.—According to Rule 7 of the Rules framed by the State Government under the Act, where a part payment is made, interest would be calculated at the unsecured rate. But if the final payment is made within the specified time, the account would be adjusted and the interest re-calculated at the secured rate.

55. *Subodh Chandra Banerji v. Jwala Prasad*, 1949 ALJ 332.

56. *Abdul Samad Khan v. Bhikam Singh*, 1943 O W N 78=1943 R D 185.

Note :—For the purposes of Chapter IV it is not necessary that the defendant on the date of suit be an agriculturist ⁵⁵.

Sub-section (2)—Notification.—By Notification No. 344, dated 1st May, 1935, published in the U. P. Gazette, dated 4th May, 1935, page 200 the rate of interest was notified at 3 1/2 P. C. from 8th May, 1935, to 14th January, 1936, while from 15th January, 1936, the rate of interest has been notified at 3 1/4 P. C. *vide* Notification No. 2677-IV/1, dated 7th January, 1936, published in the U. P. Gazette, dated 11th January, 1936, Part I page 32.

Sub-section (3)—Rate of interest.—The prevailing rates shall be fixed at the percentage rates specified for different classes of loans in Schedule II above the rate of interest as fixed by the notifications. The result is that the prevailing rate of interest shall be as mentioned below :—

Amount of Loans	Secured Loans				Unsecured Loans			
		Compound P. C. P. A. with yearly rates	Simple P. C. P. A.		Compound P. C. P. A. with yearly rates	Simple P. C. P. A.		
Rs. 500 and under	6 1/4	8 3/4	10 3/4	13 3/4		
Rs. 500 to Rs. 5,000	5 3/4	7 3/4	9 1/4	11 3/4		
Rs. 5,001 to Rs. 20,000	5 1/4	6 3/4	7 3/4	9 1/4		
Over Rs. 20,000	4 3/4	5 3/4	6 3/4	8 1/4		

29. Benefit for prompt payment of loans taken after the passing of this Act.—If an unsecured loan taken after the date on which this Act comes into force, is, if it is not a loan for a fixed term, repaid within two years of the date of the taking of the loan, or, if it is a loan for a fixed period, is repaid within such period, the debtor shall not be liable to pay interest at a rate higher than the prevailing rate of interest for a secured loan of the same class in force at the time the loan was taken.

Legislative changes.—Repealed by Section 27 (1) of U. P. Act XIII of 1940, made by the Governor in exercise of the powers assumed by him under Section 93 of the G. of I. Act, 1935, except in its application to advances made before the first day of June, 1940, not being loans as defined in that Act.

Effect of Section 39 on Section 29.—Section 29 is to be read with Section 39 of the U. P. Agriculturists' Relief Act. They should be so construed as to harmonise with each other. According to Section 39 an entry has to be made in every document of loan specifying the date by which repayment must be made to earn the benefit of Section 29, and a copy of such document must be given to the debtor. If this copy is not given no interest shall accrue ⁵⁶.

Payment in Part—Effect.—According to Rule 7 of the Rules framed by the State Government under the Act, where a part payment is made, interest would be calculated at the unsecured rate. But if the final payment is made within the specified time, the account would be adjusted and the interest re-calculated at the secured rate.

55. *Subodh Chandra Banerji v. Jwala Prasad*, 1949 ALJ 332.

56. *Abdul Samad Khan v. Bhikam Singh*, 1943 O W N 78=1943 R D 185.

30. Rate of interest on undecreed loans taken before this Act came into force for the period after January 1, 1930.—(1) Notwithstanding anything in any contract to the contrary no debtor shall be liable to pay interest on a loan taken before this Act comes into force at a rate higher than that specified in Schedule II for the period from January 1, 1930, till such date as may be fixed by the [State Government] in the [Official Gazette] in this behalf.

(2) If a decree has already been passed on the basis of a loan and remains unsatisfied in whole or in part, the Court which passed the decree shall, on the application of the judgment-debtor amend it by reducing, in accordance with the provisions of sub-section (1), the amount decreed on account of interest.

(3) A decree amended in accordance with the provisions of sub-section (2) shall be deemed to bear the date of the original decree, and, notwithstanding any provision in any law to the contrary, no appeal shall lie from any order amending a decree under that sub-section.

(4) Any amount already received by the creditor on account of interest in excess of that due under this section shall be credited towards the principal; but nothing in this section shall be deemed to entitle a debtor to claim refund of any part of the interest already paid by him.

Legislative Changes.—Repealed by Section 27 (1) of U. P. Act XII of 1940, made by the Governor in exercise of the powers assumed by him under Section 93 of the G. of I. Act, 1935, except in its application to advances made before the first day of June, 1940, not being loans as defined in that Act.

Debtor—meaning of.—A debtor is one who has to pay a debt. The meaning cannot be limited to a person, who took the loan or is personally liable to pay it. He may be one who is personally liable or may be one who is a mortgagor⁵⁷ or the successor of a mortgagor⁵⁸. The last case further lays down that the word ‘debtor’ might include a person, who is not an agriculturist.

Loan—meaning of.—‘Loan’ as used in this section has been differently interpreted by the Chief Court of Oudh and the Allahabad High Court. In *Kailash Kunwar v. Amarnath*⁵⁹, the Chief Court held that the word ‘loan’ used in Section 30 (1) in contrast with words ‘the sum originally borrowed’ used in Section 31 is not intended to signify only the principal amount but implies the amount found due under the terms of a contract or decree up to 31st December, 1929. The Allahabad High Court on the other hand in *Ramnan Lal v. Hakim Kamla Das*⁶⁰, held that ‘loan’ means the principal amount advance⁶¹, and does not include the accumulated interest. The Chief Court in *Khushal Chand v. Pirthipal Singh*⁶², did not accept this view and upheld its previous decision. The Allahabad decision was upheld by a Full Bench of the High Court in *Raghbir Singh v. Moolchand*⁶³, which held that having regard to the definition of the words ‘loan’ and ‘interest’ as given in Section 2 of the Act it is clear that the word ‘loan’ cannot include any interest on the principal that may accrue as a result of the contractual liability of the debtor after the advance had been made. This view was followed in *Dharam Singh v. Bishan Swaroop*⁶⁴; *Gurcharan Prasad v. Ali Sajjad*,⁶⁵; *Ramanand Misir v. Ram Narain Chauhan*,⁶⁶. The matter again came up for consideration before a Full Bench of the Allahabad High Court consisting of five Judges and it has been held that the word loan in Section 30 (1) means not the principal lent but the amount which is due on 31st December, 1929, for principal and interest and it is on this amount that the statutory rate of interest is to be charged from 1st January, 1930⁶⁷. The Chief Court of Oudh in *Muneshwar*

57. *Sheo Charan Lal v. Umrao Begum*, 1938 A L J 322.

62. 1937 ALJ 671=1937 A 598.

58. *Bisheshwar Das Bapuli v. Umrao Kant Pandey*, 1937 A 297=1937 A L J 363=1937 R D 219,

63. 1938 A 1=1937 A L J 882=173

59. 1936 O W N 471=1936 R D 218 =1936 O 334.

64. 1938 R D 844.

60. 1936 A 864=1936 R D 491.

65. 1939 A 331=1939 A L J 189.

61. 1937 O W N 875=1937 O 499.

66. *Pritab Singh and others v. B. Gulzari Lal and others*, 1942 A 50 =1942 A L J 3=1942 A W H 11.

*Bux Singh v. Jang Bahadur Singh*⁶⁷ re-affirmed the previous decisions and held that the word "loan" meant not only the principal amount but the whole amount including the principal and interest due under the terms of a contract or decree up to 31st December, 1929, and hence the interest would be calculated on the whole amount due on 1st January, 1930.

Interest—Principles for allowing.—(1) A careful reading of sub-section (1) would make it clear that the contractual rate of interest prior to January 1st, 1930, cannot be interfered with. The section provides only for reduction of the rate of interest from 1st January, 1930, on the amount found due under the terms of the contract under clause (1) or under the terms of the decree under clause (2)⁶⁸. A court has no jurisdiction to interfere with the rate of interest before 1st January, 1930⁶⁹.

(2) In reducing interest under the provisions of this section the court cannot alter compound interest into simple interest⁷⁰. The same view has been taken in *Tara Chand v. Collector of Aligarh*⁷¹, where it has been further laid down that the stipulation between the parties as to the payment of compound interest has to be respected and be interfered with only to this extent that the interest is to be compounded with yearly rate as provided for by Schedule III.

(3) If a transaction of loan has been renewed after 1st January, 1930, and a fresh mortgage has been executed in lieu of the principal and interest due up to the date of renewal, the transaction may be re-opened and interest reduced with effect from 1st of January, 1930,⁷². The same principle would apply in the case of a pronote⁷³.

(4) The rates of interest given in Schedule III are the maximum rates, beyond which interest cannot be allowed. No debtor shall be liable to pay interest at a rate higher than that specified in Schedule III. This does not mean that a lower rate of interest cannot be allowed. The court is at liberty to grant a lower rate of interest than that prescribed by the Act⁷⁴.

Future interest.—Future interest allowed in decrees is subject to the reduction under Section 30 of the U. P. Agriculturists' Relief Act according to the rates specified in Schedule III of the Act. Section 4 of the Act, however, does not apply to decrees passed before the Act, and therefore future interest is not liable to further modification according to the rate notified by Government under Section 4 (2) of the Act⁷⁵. This view has been followed in *Dwarka Prasad v. Mohammad Taqi Husain*⁷⁶. The same view has been taken by the Allahabad High Court in *Nannoo Mal v. Moti Lal*⁷⁷.

If the original decree does not allow future interest the court in amending the decree has no jurisdiction to allow future interest under the Agriculturists' Relief Act⁷⁸.

The same view has been taken in *Gauri Shankar v. Ganga Baksh Singh*⁷⁹, and by the Allahabad High Court in *Ramman Lal v. Kamla Dat*⁸⁰.

Decrees that can be amended.—A decree can be amended under Section 30 (2) of the Act. It provides that "if a decree has already been passed" on the basis of a loan, the court can amend it in accordance with the provisions of Section 30 (1). The words "if a decree has already been passed" are rather ambiguous, and it is not clear whether they refer only to decrees passed before that Act came into force or even to decrees passed before the date on which an application for reduction of interest is

- 67. 1944 OWN 505.
- 68. *Kailash Kuar v. Anurnath*, 1936 O W N 471=1936 O 334; *Pratab Singh v. Gulzari Lal*, 1942 A L J 3=1942 A 50; *Muneshwar Bux Singh v. Jang Bahadur Singh*, 1944 O W N 505 (C C).
- 69. *Ram Narain v. Mahmood Hasan*, 1936 A 450.
- 70. *Bisesar Ram v. Parasnath*, 1937 A L J 152=1937 A 207; *Mukat Lal v. Raghu Raj Singh*, 1939 A L J 1048=1939 R D 609.
- 71. 1939 A L J 469=1939 R D 332=1939 A 552.
- 72. *Dharam Singh v. Bishan Swaroop*, 1937 R D 536=1937 A L J 882.
- 73. *Ramanand Misir v. Ram Baran Chabe*, 1939 A L J 889=1939 R D 140.
- 74. *Gurcharan Prasad v. Ali Sajjad*, 1938 A L J 991; See also *Gauri Shankar v. Ganga Baksh Singh*, 1937 O W N 130.
- 75. *Jhamman Lal v. Surat Singh*, 1937 O W N 550 F B=1937 R D 235=1937 Oudh 812.
- 76. 1938 O W N 573=1938 Oudh 184.
- 77. 1937 A L J 681; See also 1938 A L J 991.
- 78. *Girwar Singh v. Ramman Lal*, 1936 O W N 1090=1936 R D 531.
- 79. 1937 O W N 130=1937 Oudh 266.
- 80. 1936 A L J 1154=1936 A 864.

made. The Allahabad High Court in *Baryar Singh v. Ram Dularey*⁸¹, held that a judgment-debtor can in the case of a decree passed after the coming into force of the Act apply for relief under Section 30 (2); in *Narain Singh v. Bankey Behary Lal*⁸², it was held that "already been passed" has reference to the date upon which "application" under Section 30 was made; and in *Abdul Noor v. Brijmohan Saran*⁸³, the view taken in the two previous cases was upheld. The matter came before a Full Bench of the Chief Court of Oudh, which dissented from the view taken by the Allahabad High Court and in *Kazim Husain v. Musammat Mangala Devi*⁸⁴, held that these words referred only to decrees passed before the Act came into force. A Full Bench of the Allahabad High Court has also overruled in previous decisions and held that the word "already" refers to the date on which the Act came into force and not to the date on which the application for amendment in filed⁸⁵.

Usufructuary mortgage.—If Section 30 applies.—The Chief Court of Oudh in *Deputy Commissioner, Sitapur v. Chotev Singh*⁸⁶, held that Section 30 applied to usufructuary mortgages. This view has been followed in *Ram Narain v. Chandrika Prasad*⁸⁷. The same view has been taken by the Allahabad High Court in *Dharam Singh v. Bishen Sarup*⁸⁸. Therefore the rent reserved in the lease executed by the mortgagor in favour of the mortgagee being no more than a return to be made to the mortgagee over and above what has been actually lent by him comes within the definition of interest and can therefore be dealt with in accordance with the provisions of Section 30.

Some judgment-debtors not joining the application for amendment—effect.—An amendment made in a decree under Sections 5 and 30 enures for the benefit of all the judgment-debtors even though some of them do not join in the application made under Sections 5 and 30 of the Act—*The Allahabad Bank Limited v. Butay Krishna*⁸⁹.

Sub-section (3) — object.—This sub-section lays down that a decree amended in accordance with the provisions of sub-section (2) shall be deemed to bear the date of the original decree. The object is that the decree-holder may not be allowed to claim a fresh period of limitation from the date of the amendment under Article 182 (4), Indian Limitation Act⁹⁰. For scope and effect see *Mohd. Maqbool Ali Khan v. Hoshair Singh*⁹¹.

Refund of excess payment—if permissible.—There can be no refund when accounts are opened under Section 33 of the Agriculturists' Relief Act as Section 30 (4) explicitly lays down that a debtor is not entitled to claim a refund or any part of interest already paid by him⁹². In case a mortgagor, after creating a usufructuary mortgage, creates another mortgage in favour of the same mortgagee, agreeing to pay the two debts together or that the first mortgage will not be redeemed without redeeming the second, the surplus profits of the first mortgage can be applied towards the payment of the second mortgage⁹³.

Res judicata—Applicable.—An Agriculturist purchased certain property and in lieu of the un-paid balance at the purchase price executed a mortgage in favour of the vendor. A decree was obtained on the basis of mortgage deed, and was subsequently amended and the rate of interest was reduced under this section without any objection by the decree-holder. An objection raised in execution appeal that the transaction was not a loan would be barred by constructive *res judicata*⁹⁴.

Appeal or Revision.—Section 30 (3) lays down that no appeal shall lie from any order amending a decree. There is no provision in the Act about orders refusing to amend a decree. It cannot be disputed that an order refusing to amend a decree is not a decree. The general rule is that a right of appeal cannot be assumed unless it is clearly given by statute⁹⁵. In the Act there being no general provision giving a right of appeal, an order refusing to amend a decree is not appealable⁹⁶. The same

- 81. 1936 A L J 1909=1937 A 96.
- 82. 1937 A W R 489=1937 A 752.
- 83. 1938 A L J 107.
- 84. 1940 O W N 403=1940 Oudh 251.
- 85. *Sri Nath v. Puran Mal*, 1942 A 19.
- 86. F C A 84 of 1936.
- 87. 1938 O W N 535=1938 R D 567.
- 88. 1937 A L J 882=1937 R D 536.
- 89. 1937 O W N 952=1937 R D 473.
- 90. *Jhamman Singh v. Surat Singh*, 1937 O W N 550.
- 91. 1946 O W N 164 (H C).

- 92. *Sheo Charan Lal v. Umrao Begum*, 1938 A L J 892=1938 A 811.
- 93. *Kanhaiya Lal v. Lal Bahadur*, 1948 O 253.
- 94. *Ram Prasad v. Lala Hans Raj*, 1950 A 106.
- 95. *Meenakshi Naidu v. Subramaniya Sastri*, 14 I A 160; *Rangoon Botatung Co. v. The Collector, Rangoon*, 29 I A 197.
- 96. *Nikhal Singh v. Ganesh Das Ram Gopal*, 1936 O W N 1158.

view has been taken by the Allahabad High Court in *Bireswar Das v. Uma Kant Pandey*⁹⁷, which also lays down that a revision is maintainable.

Jurisdiction.—In respect of a mortgage for Rs. 19-15 a suit for accounting and possession would lie in Civil Court.⁹⁸

31. Rate of interest on loans taken after this Act came into force after the aggregate of interest has reached 100 per cent. of the sum borrowed.—(1) Notwithstanding anything in any contract to the contrary no loan taken after this Act comes into force shall bear interest at a rate higher than that specified in Schedule IV, calculated on the sum originally borrowed or such part of it as has not already been repaid after a sum equal to the sum originally borrowed has been realized or has accrued at the contractual rate on account of interest on such loan.

(2) Any amount already received by the creditor on account of interest in excess of that due under the provisions of this section shall be credited towards principal; but nothing in this section shall be deemed to entitle a debtor to claim refund of any part of the interest already paid by him.

Rates of interest under the section—This section applies to loans taken after the commencement of the Act. Schedule IV allows simple interest at the rate notified under Section 4 as in force at the time when the aggregate of interest realised or accrued become equal to the sum originally borrowed in the case of secured loans, and 2 per cent. above that rate in the case of unsecured loans. In view of the Notification No. 343, dated 1st May, 1935, and No. 2677-II/I, dated 7th January, 1936, the following rates of interest apply:—

Period	Secured	Unsecured
7th May, 1935 to 14th January, 1936	3 1/2 per cent.	5 1/2 per cent.
15th January, 1936 to	3 1/4 per cent.	5 1/4 per cent.

CHAPTER V

Maintenance of Accounts

Note:—This chapter applies to all agriculturists irrespective of the limit of land revenue, local rate, rent or area possessed by them.

32. Duty of creditor to maintain and furnish accounts.—(1) A creditor shall, after the date on which this Act comes into force,—

(a) regularly record and maintain a correct account for each agriculturist debtor of all transactions relating to each loan advanced to that debtor, in such manner as the [State Government] may prescribe; and

(b) supply each agriculturist debtor every year with a full and correct statement of account signed by the creditor or his agent of any balance or amount that may be outstanding against such debtor on account of each separate loan on such date as the [State Government] may prescribe in this behalf. Such statement of account shall include all transactions entered into during the year to which the statement relates, and shall contain such details and particulars as the [State Govern-] ment may prescribe. It shall be supplied to the

97. 1937 A 297.

98. *Nasib Kehar v. Raghunath Misir*, 1947 A W R (H C) 438.

debtor within one month of the aforesaid date in such form and in such manner as the [State Government] may prescribe :

Provided that, where there is a current account, it shall be sufficient for the creditor for the purposes of clause (a) to keep one account of all transactions relating thereto, and for the purposes of clause (b) to furnish particulars of the balance due on the whole account.

(2) A person to whom a statement of account has been submitted under sub-section (1) shall not be bound to acknowledge or deny its correctness, and his failure to protest shall not, by itself, be deemed to be an admission of correctness of the account.

(3) The account prescribed under sub-section (1) (a) shall be deemed to be regularly kept in the course of business for the purposes of Section 34, Indian Evidence Act, 1872, and copies of entries in such account certified in such manner as may be prescribed shall be admissible in evidence for any purpose in the same manner and to the same extent as the original entries.

Creditor—meaning of.—Creditor has been defined in Section 2 (7). See commentary under that sect on. The creditor has to supply the account to the debtor as laid down by the rules. Sending accounts by messenger is on compliance of Rule 10⁹⁹.

Accidental errors—effect.—Explanation to Section 34 condones the errors and omissions that are accidental and not material. But in order to condone them it must be shown that the statement of account was actually sent in the manner prescribed¹.

33. Suit by debtor for account of money lent.—(1) An agriculturist debtor may sue for an account of money lent or advanced to, or paid for, him by any person, or due by him to any person as the price of goods or on a written or unwritten engagement for the payment of money, and of money paid by him to such person.

(2) In such suit the Court shall [allow only such interest as may be permissible under the law applicable to the agriculturist debtor]. It shall, after taking necessary accounts, declare the amount which is still payable by the plaintiff to the defendant and shall on the application of the defendant, and if the money is payable, pass a decree in favour of the defendant.

[(3) Notwithstanding anything in the Court Fees Act, 1870, the court-fee payable on a plaint in a suit under sub-section (1) shall be that prescribed by Schedule VI ; and the fee payable on an application under sub-section (2) shall be the amount, if any, by which the fee which would be payable on a plaint in a suit for the recovery of the amount declared under that sub-section exceeds the fee already paid by the plaintiff on his plaint, or the fee prescribed by Article 1 (b) of Schedule II of the Court Fees Act, 1870, whichever is greater :

Provided that if the plaintiff is a person who belongs to any of the class of persons mentioned in clause (h) of sub-section (2) of Section 2 or is a person who pays rent not exceeding Rs. 200 or land revenue not exceeding Rs. 100, or pays both rent and land revenue the total

99. *Harak v. Lalta Prasad*, 1943 O W N 104.

1. *Bohra Kishori Lal v. Bohra Misri Lal*, 1950 A W R 537=1950 A L J 566.

amount of which does not exceed Rs. 150, but does not in any case pay income-tax, the court-fee payable by the defendant on an application under sub-section (2), or by the plaintiff under sub-section (4), shall be half of the amount prescribed by this sub-section or by sub-section (4), as the case may be.]

[4] * * *

Legislative changes.—The words in brackets in sub-section (3) were substituted for the words 'follow the provisions of Chapter IV of this Act and the provisions of the Usurious Loans Act, 1918' by Section 27 (2) (a) of U. P. Act, XIII of 1940 which also omitted by sub-section (4). Sub-section (3) was added by U. P. Act, IX of 1937 which had added sub-section (4).

Agriculturist-debtor—meaning.—A person entitled to sue under the provisions of this section has to fulfil two conditions : (a) he must be an agriculturist and (b) he must be a debtor as well. The plaintiff must be a debtor when the suit is filed, and if a transaction was closed before the suit is filed, a suit for the re-opening of the accounts of that transaction would not lie². The debtor has further to establish that he was an agriculturist at the date when the loan was advanced, and also at the date when the suit was filed³. The plaintiff must be an agriculturist at the time of the taking of the loan⁴, and also at the time of the institution of the suit⁵. The section is not confined to loans as defined in the Act⁶.

Written Engagement—transactions included in.—This would include every document in writing. It may be a promissory note, a simple bond, a simple mortgage-deed, a ususfructuary mortgage-deed or a mortgage by way of conditional sale⁷. In an ususfructuary mortgage-deed, even if no interest is provided, a suit would lie under the section for accounts⁸.

A portion of mortgaged property outside the State—effect.—It is a well known principle of law that the local Acts made by the local legislature of one State cannot affect rights in land outside the State⁹. Therefore if in a mortgage-deed some property in the Uttar Pradesh and some outside the State is included the mortgagor is not entitled to the benefits of this section—*Ibid*. Even an injunction cannot be issued by a court in this State restraining the mortgagee from proceeding with his suit for recovery of his money beyond the State¹⁰.

"Law applicable to the Agriculturist Debtor"—meaning.—In sub-section (2) words "allow only such interest as may be permissible under the law applicable to the agriculturist debtor" have been introduced by Section 27 (2) ('a) of Act XIII of 1940 for the words "follow the provisions of Chapter IV of this Act and the provisions of the Usurious Loans Act, X of 1918." These words therefore mean that if the loan was advanced previous to 1st June, 1940, (vide Section 2(9), U. P. Debt Redemption Act) and is covered by the definition of loan as given in Act XIII of 1940 (U.P. Debt Redemption Act) the rate of interest would be regulated by that Act, otherwise by the provisions of the U.P. Agriculturists' Relief Act, if however the loan is taken subsequent to 1st June, 1940, the rate of interest would be governed by the Usurious Loans Act and the U.P. Regulation of Agricultural Credit Act.

Accounting—method and results of.—Clause (2) of Section 33 provides that the court after taking necessary accounts shall declare the amount still payable by the plaintiff. The section does not use the word 'loan' and therefore in taking account the court need not consider whether the transaction amounts to a loan, but shall take account of money lent or advanced to or paid for him by any person, or due by him to any person as the price of goods or on a written or unwritten engagement for the

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| <ol style="list-style-type: none"> 2. <i>Sunder Singh v. Khushi Ram</i>, 1938 A L J 976. 3. <i>Kazim Husain v. Mangla Devi</i>, 1941 O W N 242=1941 R D 90. 4. <i>Chedi Lal v. Bharat Tamboli</i>, 1939 A 448=1939 A L J 243. 5. <i>Sunder Lal v. Khushi Ram</i>, 1936 A L J 976. 6. <i>Bhawani Shankar v. Ram Lal</i>, 1946 A L J 363. 7. <i>Dharam Singh v. Bishen Swarup</i>, | <ol style="list-style-type: none"> 1937 R D 367=1937 A L J 882 followed in <i>Ran Navain v. Chandika Prasad</i>, 1938 R D 567 (Oudh). 8. <i>Digbijja Singh v. Burjh sen</i>, 1940 A 520=1940 A L J 615. 9. <i>Wahiduddin v. Makhan Lal</i>, 1938 A 564=1938 A L J 872=1938 R D 728. 10. <i>Parbhu Dayal v. Lal Dass Mangan Lal</i>, 1939 A 643=1939 A L J 638. |
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payment of money paid by him to such person. The transaction shall be re-opened and accounts taken in accordance with the provisions of the U.P. Agriculturists' Relief Act, the U.P. Debt Redemption Act or the Usurious Loans Act whichever may be applicable. Under the Agriculturists' Relief Act, the court cannot go behind 1st January, 1930. It shall accept the amount due on 31st December, 1929 for principal and interest as principal, while under the U.P. Debt Redemption Act, the court shall treat as principal any accumulated interest which has been converted into principal at any statement or settlement of account or by any contract in the course of the transaction before the first day of January, 1917, while under the Usurious Loans Act accounts can be re-opened up to seventeen years calculated from the last transaction. Where money is due on two or more transactions and one of them is fully discharged the court cannot take accounts of the transaction fully discharged²². Where a pronote is executed and the creditor is given possession over a plot of land, a suit for accounting can be filed on the allegation that the debt has been paid off from the usufruct of the plot²³. After accounts if any amount is found due to the creditor, the court shall pass a decree for the amount in favour of the creditor; even in case of mortgagee the defendant can obtain a decree for sale or foreclosure of the property mortgaged²⁴. But the court can grant the decree in favour of the creditor only if by the terms of the contract the money is in fact payable at the time²⁵. It is, however, open to the creditor to obtain a decree under Section 33 (2) or to bring a separate suit for sale of the mortgaged property. If he exercises the latter option, and the mortgagee's suit would not be barred under Section 10, C.P.C.²⁶. In case of overpayment the plaintiff-debtor was entitled to a refund under clause 4 of Section 33, but that clause has now been repealed by Section 27 of the U.P. Debt Redemption Act. If the loan is a loan as defined by the U.P. Debt Redemption Act, no refund can be allowed, otherwise the provisions of the Transfer of Property Act would apply and there is no bar to a grant of refund. Section 4 of the U.P. Debt Redemption Act cannot be applied to a proceeding under Section 33, Agriculturists' Relief Act, by the debtor at any rate when there is no application by the creditor for a decree in his favour²⁷. Where there is a mortgage by two persons A and S, and S sells his part of the mortgaged property to the mortgagee, A is entitled to accounts under Section 33 and claim benefit of the Act, and it is immaterial whether S was an agriculturist²⁸. In case of ususfructuary mortgage, if it is not possible to determine the actual profits, the profits received by the mortgagee should be calculated at the rate of rent on which the land mortgaged could be let out to non-occupancy tenants²⁹. The costs of collections if incurred would be 10%, but if the mortgagee himself makes collections he would not be entitled to any costs³⁰. No Commissioner can be appointed to determine profits³¹. The section is not confined to accounting between a mortgagor and mortgagee, but it applies to all advances made to an agriculturist³².

Suits.—Valuation and Court Fee.—There was considerable controversy with respect to the nature of the suit under Section 33 of the U.P. Agriculturists' Relief Act, and the court fee payable on it. The controversy has been set at rest by the amendments introduced by Act IX of 1937. The suit under this section is for accounts and not for a declaration³³ and the court fee payable is that prescribed by Schedule IV. The amendment is, however, not retrospective³⁴. It is further laid down by the proviso that if the plaintiff is a person who belongs to any of the class of persons mentioned in clause (b) of sub-section (2) of the section or is a person who pays rent not exceeding Rs. 200, land revenue not exceeding Rs. 100 or pays both rent and land revenue the total amount of which does not exceed Rs. 150, but does not in any case pay income-tax, the court fee payable by the defendant on an application under sub-section (2) or by the plaintiff under sub-section (4) shall be half of

22. *Sunder Lal v. Kanshi Ram*, 1938 A L J 975.
23. *Ganeshwari v. Patri Tewari*, 1951 A W R 516.
24. *Lala Ram Narain v. Thakur Chandrika Prasad*, 1938 Oudh 156 followed in 1940 Oudh 410=1940 O A 796=1940 A W R 407 (C).
25. *Sahu Ram v. Ashfaq Husain*, 1945 O W N 103.
26. *Haltri Ram v. Hazi Mohammad*, 1954 A 141.
27. *Musammat Sughra v. Musammat Sughra Begum*, 1945 O A 14 (H C—"B").
28. *Mohammad Shafi v. Ali Razo*, 1245

- O A 8 (H C—"B").
29. *Krishna Sharan Shukla v. Bali Bahadur Shukla*, 1951 A W R 223 =1952 A 140.
30. *Fazl-ul Haq v. Pyare Lal*, 1951 A L J 281.
31. *Krishna Sharan Shukla v. Bali Bahadur Shukla*, 1952 A 140.
32. *Bagwan Prasad v. Ram Avadh*, 1950 A W R 278=1950 A L J 463.
33. *Harendra Shankar v. Khiali Ram*, 1940 A 504 (F B)=1940 A L J 689; *Bharat Singh v. Chotey Singh*, 16 Luck. 398.
34. *Obaidullah Khan v. Rani Lal*, 1940 A 189=1940 A L J 36.

the amount described by this sub-section or sub-section (4), as the case may be. Sub-section (4) has been deleted by Section 27 (2) (b) of the U.P. Debt Redemption Act, so this proviso would now apply to the defendant alone, and in the circumstances mentioned in the proviso he would be entitled to get a decree on the payment of half the court fee prescribed under sub-section (3).

In a suit under Section 33, U.P. Agriculturists' Relief Act, the plaintiff is entitled to claim the reliefs provided in Sections 8 and 9 of the U.P. Debt Redemption Act and the court fee payable would be the same as provided by sub-section (3). The Chief Court of Oudh in *Chief Inspector of Stamps, U.P., in re, Ram Kumar v. Dwarka Prasad*³⁵ has laid down that if the suit is filed under Section 7 and 9 of the U.P. Debt Redemption Act, the plaintiff would not be entitled to the benefit of the reduced scale of court fee under Section 33 of the U.P. Agriculturists' Relief Act. It is, however, respectfully submitted that no suit for redemption or accounts can be brought under Sections 7 of the U.P. Debt Redemption Act. Section 7 merely enables the debtor to file his suit irrespective of any control regarding the dates on which a loan shall become due, and as much a suit for accounts under Section 33 of the U.P. Agriculturists' Relief Act can be brought even before the period provided in the deed. Therefore the suit shall be in the main under Section 33 of the U.P. Agriculturists' Relief Act to which the provisions of Sections 7 and 9 of the U.P. Debt Redemption Act would apply, and as such the court fee payable would be under Section 33 (3) of the U.P. Agriculturists' Relief Act.

The valuation of the suit has to be made in accordance with Rule 28 (3) of Notification No. 7067/303—(4), dated 17th December, 1935, i.e., between Rs. 100 and 500³⁶.

Amendment.—An application under this section is merely for a declaratory relief, but a creditor is entitled to apply that a decree may be passed in his favour for the amount found due. So long as the creditor does not secure the decree under Section 33 (2), and so long as the decree remains a declaratory decree no application for the amendment of that decree under Section 8 of the U.P. Debt Redemption Act can be made.³⁷

Appeal—valuation and court fee.—The Allahabad High Court in *Pahlad Singh v. Nadar Singh*³⁸ held that when in a suit for accounts under Section 33, U.P. Agriculturists' Relief Act the court has adjudicated and declared the amount due from the plaintiff to the defendant, and the plaintiff appeals, seeking reduction of such amount then, whether the defendant has or has not applied for and obtained a decree under sub-section (2) *ad valorem* court fee on the appeal must be paid, the court fee thereof being calculated according to Art. 1 of Sch. I of the Court Fees Act upon the amount by which the plaintiff seeks reduction in his appeal. It was also held that the appellant, who seeks reduction by a definite amount is not entitled to put a fictitious valuation on the memorandum of appeal for the purpose of Section 7 (iv) (f) corresponding to Section 7 (iv) (e) of the amended Court Fees Act. It was further held that the declaration under the first part of sub-section (2) of Section 33 is a decree within the meaning of Section 2 (2) of the Code of Civil Procedure. This case was approved by a Full Bench of the Allahabad High Court in *Harendra Shanker v. Khiali Ram*³⁹. The Chief Court of Oudh in *Bharat Singh v. Chotey Singh*⁴⁰ held that where the appellant did not seek modification of the decree of the court below to the extent of a specific amount he could value the appeal at a reasonable amount and pay *ad valorem* court fee on that amount. This view has been distinguished in *Bharat Singh v. Durga Dayal*⁴¹ and the view taken by the Allahabad High Court has been upheld in *Munna Singh v. Ram Lal*⁴² which lays down that the amendment contained in sub-section (3) has not in any way altered the nature of the suit under the section; all that it did was to make a convenient rule for the payment of court fee upon a plaint since it could not be told beforehand what the amount declared would be. It was found more convenient to have some such rule as this for the initial payment of court fee. Once, however, the amount has been declared no such rule of convenience is required and the omission of memorandum of appeal from Schedule VI indicates clearly that the legislature intended that the court fee payable should remain as it had been before *viz*, *ad valorem* court fee.

35. 1943 O W N 473 (C C).
 36. *Brij Behari Lal v. Gopi Nath*, 1938 A 76=1947 A L J 1224: *Anis Begum v. Shyam Sunder Lal*, 1937 A 792=172 I C 653. See also Rule 268 of the Oudh Civil Rules.

37. *Abdul Saeed Khan v. Mohd Ali*, 1950 A 467 (F B).
 38. 1938 A 686.
 39. 1940 A 762=1940 O W N 1130.
 40. 1940 O W N 1185.
 41. 1943 R D 110.
 42. 1941 O W N 1355.

Transaction invalid—Effect.—Though a mortgagor of a tenancy holding cannot sue for the ejc-tment of the mortgagee relying on the invalidity of the transaction, his suit cannot be thrown out on any principle of *in pari delicto* when the loan is alleged to have been paid up. A revenue court does not err if it applies Section 33 of the Agriculturists' Relief Act and Section 9 of the Debt Redemption Act to such a case⁴³. But a suit for accounts of money due would not lie if the mortgage is void⁴⁴.

Accounting – Right.—If a certain person executes an usufructuary mortgage of his proprietary rights at a time when no ex-proprietary rights were available under law, but he thereafter sells them at a time when in his *sir* land he obtains ex-proprietary rights, he is entitled to sue for accounting under the Section⁴⁵.

34. Penalty for non-compliance with the provisions of Section 24.—Notwithstanding anything contained in any other enactment for the time being in force.—

- (a) in any suit or proceeding relating to a loan against an agriculturist, if the debtor objects that the creditor has not complied with the provisions of Section 32, the Court shall determine such objection before deciding the claim on the merits;
- (b) if the Court finds that the provisions of clause (a) of Section 32 (1) have not been complied with by the creditor, it may, if the creditor's claim is established in whole or in part, disallow the whole or a portion of the interest found due, as it may deem reasonable in the circumstances of the case, and shall disallow the creditor's costs;
- (c) if the Court finds that the provisions of clause (b) of Section 32 (1) have not been complied with by the creditor, the Court shall in computing the amount of interest due upon the loan exclude every period for which the creditor has failed to comply with the said provision:

Provided that if the creditor has, after the time prescribed in the said clause, furnished the account and satisfies the Court that he had sufficient cause for not furnishing it earlier, the Court, notwithstanding such omission, include any such period or periods for the purpose of computing the interest :

Provided further, that if the creditor has submitted an account which is not full and correct, and satisfies the Court that the omission or error was *bona fide* and due to inadvertence, the Court shall, notwithstanding such omission or error include any such period or periods for the purposes of computing the interest.

Explanation—A person who has kept his account and submitted his yearly statement of account in the form and manner prescribed in clauses (a) and (b) of sub-section (1) of Section 32 shall be held to have complied with the provisions of these clauses, in spite of any errors and omissions, if the Court finds that the errors and omissions were accidental and not material and that the accounts have been kept in good faith with the intention of complying with the provisions of these clauses.

43. *Ratan v. Baiju*, 1944 R D 517.

44. *Ganga Pandey v. Raja Ram Dube*, 1951 A L J 327.

45. *Nageshwar Upadhyaya v. Charan Charuman Rewari*, 1952 A 598.

Suit by an Agriculturist debtor—effect.—The wordings of the section are very unfortunate. The section contemplates a suit or proceedings initiated by a creditor against an agriculturist but takes no account of the suit or proceedings instituted by a debtor. There is no doubt that the section must be interpreted liberally, but the cardinal principle of interpretation is that regard must be had to the language of the statute, taken in its plain ordinary sense, and not its policy or supposed intention⁴⁶. If the language is clear and unambiguous, courts must give effect to it whatever the consequences⁴⁷. The language of Section 34 is absolutely clear, and therefore a debtor cannot take advantage of the provisions of Section 34 if he himself institutes a suit for redemption under Section 12 or a suit for accounts under Section 33 or any other proceeding for the reduction of interest or the grant of instalments. The section applies only to suits and proceedings initiated by a creditor⁴⁸. A question of some difficulty would arise in a case under Section 33 (2) when the creditor applies for a decree in his favour. The suit under Section 33 no doubt is instituted by a debtor, but when a declaration for the amount due is made and the creditor applies for a decree, it is the creditor who seeks to enforce the loan against a debtor, and the proceedings after the declaration, for a decree on the basis of the loan are initiated by the creditor. Section 34 applies both to suits and Proceedings and therefore there is no reason why it should not apply in the case of an application under Section 33 (2) when the creditor wants a decree for his loan⁴⁹.

The Creditor—meaning.—“Creditor” has been used in a special sense in Chapter V of the U. P. Agriculturists’ Relief Act and has been defined in Section 2 (7) : “Creditor” means a person, who in the regular course of business, advances a loan as defined in this Act and includes the legal representatives and the successors-in-interest, whether by inheritance, assignment or otherwise of a creditor. It has to be seen whether the creditor was money-lender at the time of loan. He cannot escape by ceasing to be a creditor at the date of suit⁵⁰. The same view was taken in *Man Mohan Lal v. Sh b Shankar*⁵¹.

Accounts—Liability and Penalty.—Section 32 of the U. P. Agriculturists’ Relief Act makes it obligatory on every creditor to regularly record and maintain a correct account for each agriculturist debtor of all transactions relating to each loan advanced to the debtor and also to supply these accounts to the debtor after the Act came into force, in such manner as provided by the Rules. The Rules as framed by the State Government were published in the Uttar Pradesh Gazette on 10th August, 1935, and therefore it is from that date that the creditor is required to comply with the provisions of Section 32. In case of failure the penalty is laid down in Section 34. Clause (b) provides that if the court finds that the creditor has failed to regularly record and maintain a correct account, the court may disallow the whole or portion of the interest found due and shall disallow the creditor’s costs, while clause (c) provides that if the finding of the court is that the creditor has failed to supply the debtor every year with a full and correct statement of account the court shall in computing interest exclude every period for which the creditor has failed to supply the statement of account as prescribed. Accounts showing bond rate of interest and not scheduled there is no compliance with Section 32 (a) and the debtor is entitled to the benefits of Section 34. The Court, however, can only disallow interest that has remained due on the date of the suit and cannot ask the creditor to account for sums paid as interest towards the principal⁵². In the absence of proof of an agreement in writing to accept personal delivery, a creditor is bound to send the accounts by registered post, a failure of which would disentitle him to interest and to record and maintain correct accounts in the manner prescribed, a failure of which would also disentitle him to costs. If he wants to invoke the aid of the explanation, he must show that the accounts were sent in the manner prescribed⁵³. It is sufficient if the debtor is shown to be agriculturist on the date of loan though he may not be so on the date of suit⁵⁴. See also Section 35 which imposes a criminal liability.

- 46. *Mohammad Abdul Razaq v. Parvati Devi*, 1942 OWN 607.
- 47. *Baijnath Singh v. Rajju Singh*, 1926 Oudh 101.
- 48. *Munney Khan v. Mohammad Bux*, 1949 D L R 5 (Luck Bench Alld); *Gopal v. Jagdish Singh*, 1950 A 413 = 1950 A W R 6:0 (H. C.)
- 49. See also *Kewal Ram v. Raj Karan*, 1946 AWR 518 (HC).
- 50. *Bodh Ram v. Sukhangal Singh*,

- 144 OWN 133=1944 RD 187=1944, O 206.
- 51. 1943 ALJ 159=1943 A 194. See also 1940 A 1=1939 ALJ 957.
- 52. *Lachmi Lal v. Babu Narain Das*, 1950 A 152, *Lakshmi Lal v. Jushi Girdhari Lal*, 1950 A 49.
- 53. *Bohra Kishori Lal v. Bohra Misri Lal*, 1950 A 403=1950 ALJ 565.
- 54. *Lakshmi Narain v. Sita Ram* 1944 RD 61=1945 ALW 5.

Costs—When disallowed.—Clause (b) of Section 34 lays down that in case the court finds that the provisions of clause (a) of Section 32 (1) have not been complied with by the creditor it shall disallow the costs. Section 36 of the U. P. Agriculturists' Relief Act provides that the provisions of Sections 32, 34 and 35 shall not in the case of a loan advanced before the commencement of this Act, apply to the period prior to the commencement of this Act. However, where in a suit for recovery of loans partly advanced before the commencement of the Agriculturists' Relief Act and partly after that date, it was found that the creditor did not submit yearly statement of accounts as prescribed by Section 32 (1) of the Act, the creditor was not entitled to costs even in respect of the loans advanced prior to the commencement of the Act.⁵⁵

Section 34—When inapplicable.—The penalty provided in Section 34 can be imposed only when the debtor takes an objection that the creditor has not complied with the provisions of Section 32. It is inapplicable in *ex parte* cases and also in cases where no objection is taken by the debtor—a third person has no right to raise an objection, as also when interest has not already been paid.⁵⁶

35 Penalty for entering in books of accounts a sum larger than that actually lent and for not giving receipts.—(1) Any creditor who, after the commencement of this Act, records in his book of accounts or in the statement of account submitted to the debtor as lent to an agriculturist a sum larger than that actually lent, whether by way of charges for expenses, inquiries, fines, bonuses, premia, renewals, or otherwise, shall be punished for the first offence with fine which may extend to one hundred rupees, and, for a second or subsequent offence with regard to the same or any other agriculturist, with fine which may extend to five hundred rupees.

(2) Where in any suit concerning a loan taken by an agriculturist the Court find that the creditor has, without reasonable cause refused or neglected to deliver to the debtor a receipt for any payment by him on account of such loan or to credit such payment on the written instrument securing such loan, it may award the debtor such compensation not exceeding double the amount of such payment as it may consider proper.

Loans within the section.—The section applies to all loans whether advanced before or after the commencement of the Act. The liability under the section, however attaches to accounts maintained subsequent to the commencement of the Act, i. e., 30th April, 1935.

Nature of the Offence.—Section 209 of the Indian Penal Code lays down that whoever fraudulently or with intent to injure or annoy any person makes in a Court of Justice any claim which he knows to be false shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine. Therefore if any creditor files in a Court of Justice accounts showing lent to a debtor a sum larger than that actually lent and claims a decree on the basis of that account, the Civil Court can proceed against him under Section 476 read with Section 195 (1) (b), Criminal Procedure Code. The offence mentioned in Section 35 of the U. P. Agriculturists' Relief Act is independent of offence under Section 209 I. P. C. The Civil Court appears to have no jurisdiction under this section and action can be taken only by a complaint to the Criminal Court having jurisdiction over the matter.

36 Saving in cases of previous loans.—The provisions of Sections 32, 34 and 35 shall not, in the case of a loan advanced before the commencement of this Act, apply to the period prior to the commencement of this Act.

Loan advanced before the Act—effect.—The matter has been discussed at length in *Mohammad Ashfaq Husain v. Munshi Lal*⁵⁷, in which it has been held that where

55. *Mohammad Ashfaq Husain v. Munshi Lal*, 1943 R D 108.

56. *Tula Ram v. Debi Dutt*, 1949 A 498.

57. 1943 R D 108.

in a suit for recovery of loans partly advanced before the commencement of the Agriculturists' Relief Act and partly after that, it was found that the creditor did not submit yearly statement of accounts as prescribed by Section 32 (1) of the Act, the creditor was not entitled to costs even in respect of the loans advanced prior to the commencement of the Act. One of the reasons for holding this view is that the Act does not provide for the apportionment of the costs. However this judgment cannot be said to be final, because permission for appeal under the Letters Patent was sought and granted—so far there has been no decision of the Letters Patent appeal. The provisions of Section 36 appear to be clear and in case of a loan advanced before the commencement of this Act, the provisions of Section 34 would not apply. As such the creditor is entitled to his costs on such loan, unless the court in exercise of its discretion under Section 35 C. P. C. disallows such costs. If the provisions of Section 34 do not apply to the loan advanced before the commencement of the Act, it is respectfully submitted that the costs can be apportioned in view of Section 36 U. P. Agriculturists' Relief Act.

CHAPTER VI

Miscellaneous

37. A loan taken in kind may be paid by the debtor at his option in the same or another kind.—When a loan has been advanced in kind, a debtor may at his option repay it either in the same kind or in cash at a fair rate, if no rate has been agreed upon, or in any other form and at the rate agreed upon between the creditor and himself:

Provided that if there is a dispute about the fairness of the rate, the question shall be referred either by the creditor or the debtor to the Collector, whose decision shall be final.

Legislative changes.—Repealed by Section 27 (1) of U. P. Act, XIII of 1940, made by the Governor in exercise of the powers assumed by him under Section 93 of the G. of I. Act, 1935, except in its application to advances made before the first day of June, 1940, not being loans as defined in that Act.

Debtor under the section.—A debtor who can take advantage of the section must be an agriculturist within clauses (a) to (h) of Section 2 (2) of the Agriculturists' Relief Act as the first proviso to Section 2 (2) has no application to Chapter VI.

38. Deposit of whole or part of a debt in Court.—(1) A debtor may, at any time, whether during the pendency of a suit or otherwise, deposit in Court a sum of money not less than one-fourth of the amount due at the time in full or part payment of a Loan, not being a loan secured by a mortgage, and may apply that such sum be paid to the person to whom it is due.

(2) The Court shall give notice of such deposit to the creditor and shall on his application pay the amount of deposit to him.

(3) From the date of such deposit interest shall cease to run on the amount so deposited.

Legislative changes.—Repealed by Section 27 (1) of U. P. Act, XIII of 1940, made by Governor in exercise of the powers assumed by him under Section 93 of the G. of I. Act, 1935, except in its application to advances made before the first day of June, 1940, not being loans as defined in that Act.

Court—meaning.—Court has been defined in Section 2 (5) and means a Civil Court. Therefore for the purposes of this section "court" will mean a Civil Court having jurisdiction to entertain the suit.

Amount due—meaning.—This section has no application to loans secured by a mortgage. In case of loans, other than those secured by a mortgage, a debtor may deposit one-fourth of the amount due at the time in court. The amount due would be

the principal together with the interest permissible under law. The stipulated rate of interest provided in the transaction may be higher than that provided by law. The interest which a creditor is entitled to get cannot exceed the rate provided by law and as such the excess interest cannot be said to be due to the creditor and the debtor is not under a liability to deposit such interest in court.

39. Preparation of a document for every loan and the supply of a copy to the debtor. —(1) Every loan given after the date on which this Act comes into force shall be evidenced by a written document, of which a copy shall be given to the debtor.

(2) In the case of unsecured loans, an entry shall be made in every such document specifying the date by which repayment must be made in order to earn the benefit of Section 29 and the rate of interest which shall prevail if repayment is made by such date.

(3) No interest shall accrue on any loan until a copy of the written document prepared according to the provisions of sub-sections (1) and (2) has been supplied to the debtor as required by sub-section (1).

(4) Notwithstanding anything in the Indian Stamp Act, 1899 no such written document as is referred to in sub-section (1) shall require a stamp duty higher than that which would have been payable in respect thereof had it not contained the details mentioned in sub-sections (1) and (2), and no copy supplied to the debtor as required by sub-section (1) shall require any stamp duty.

Written document—meaning—Promissory note—Effect of Section 39 (2).—Section 39 does not prescribe any particular form of a written document to evidence the loan. The words are wide enough to cover any writing which would unmistakably show that a loan was taken by the debtor. The intention of the section appears to be that loans taken by agriculturists shall be evidenced by a writing and should not be made dependant upon parole testimony. It is only to guard against an oral or parole transaction that the section insists that the transaction shall be evidenced by a document. A loan may, therefore, be made by a receipt⁵⁸ or by a cheque⁵⁹ which also lays down that in the absence of document no suit on the basis of a loan can be decreed against an agriculturist. But an entry by a creditor entirely for his own private accounts cannot be regarded as a written document⁶⁰. A renewal is a fresh loan, and if such transaction came into existence after the enforcement of the Act it is governed by the section and copy should be given to the debtor⁶¹.

Promissory note—Effect of Section 32 2).—Section 39 (2) lays down that in case of every unsecured loan an entry shall be made in the document evidencing the loan specifying the date by which repayment must be made in order to earn the benefit of Section 29 and the rate of interest which shall prevail if re-payment is made by such date. This provision is applicable to promissory notes as well and failure to fix date for re-payment entails penalty under the section⁶². The same view is taken by the Chief Court of Oudh in *Abdus Samad Khan v. Bhikam Singh*⁶³ and the same principle would apply when the document happens to be a bond payable on demand⁶⁴.

Loan—Renewal - Effect.—When an earlier transaction of loan prior to Act is renewed, the new transaction is itself a loan for the purposes of Section 39 (1).—*Ram Sukh v. Girja Shanker*⁶⁵.

- 58. *Bij Lal v. Surajman*, 1941 O W N 832=1941 Oudh 420.
- 59. *Sunder Lal v. Rami Dayal Singh*, 1943 Oudh 332=1943 O W N 246.
- 60. *Ram Ghulam v. Kandhai Lal*, 1946 A L J 98. *Naubat Rai v. Jugat Kishore*, 1949 A L J 102.

- 61. *Lachmi Lal v. Babu Narain Das*, 1950 A 152.
- 62. *Chaitan Prakash v. Harsaran Dass*, 1944 A L W 493.
- 63. 1943 Oudh 237.
- 64. *Jamuna Prasad v. Raghunath*, 1943 A 171=1943 A W (H) 46.
- 65. 21 Luck. 2570 104.

Section 29—Repealed—Effect.—Section 29 has been repealed by Section 27 of the U. P. Debt Redemption Act and does not apply to loans advanced subsequent to 1st day of January, 1940. Therefore Section 39 (2) has no application to such loans.

40. Stamp duty, etc. on certain bonds by agriculturists.—(1) Notwithstanding anything contained in the Indian Stamp Act, 1899, and the rules made under the Indian Registration Act, 1908, the stamp duty and the registration and copying fees on bonds of value or amount not exceeding rupees three thousand, executed by an agriculturist and registered under the Indian Registration Act, shall be as laid down in Schedule V.

(2) If a bond is executed on a form printed under the authority of the [State] Government no copying fee shall be leviable for making a copy or a note of the bond in the books prescribed under the Indian Registration Act, 1908.

Legislative changes.—Repealed by Section 27(1) of U. P. Act, XIII of 1940, made by the Governor in exercise of the powers assumed by him under Section 93 of the G. of I. Act, 1935, except in its application to advances made before the first day of June, 1940, not being loans as defined in that Act.

Document not registered—Effect.—The provisions of this section would apply only when the document is executed by an agriculturist and also when the document is registered. This section cannot be availed of where the document is not registered even though it was executed by an agriculturist ⁶⁶.

41. Power of [State] Government to make rules.—(1) The [State] Government may make rules consistent with this Act for the purpose of carrying out the provisions of this Act.

(2) Before making the rules under this section the [State Government] shall publish a draft of the same in the [Official Gazette] and shall concurrently cause a copy of the said draft to be sent to every member of the [Houses of the Legislature of the State].

(3) In making the rules finally the [State Government] shall consider the opinions received by them as well as any opinion expressed by [either Houses of the Legislature of the State].

Legislative changes.—Repealed by Section 27(1) of U. P. Act, XIII of 1940, made by the Governor in exercise of the powers assumed by him under Section 93 of the G. of I. Act, 1935, except in its application to advances made before the 1st day of June, 1940, not being loans as defined in that Act.

Note.—For Rules and forms prescribed under the Act see pp. 177-185.

Rules inconsistent with Act—Effect.—The rules should be consistent with the provisions of the Act. Such rules as are not in accordance with the Act are inoperative and no effect can be given to them ⁶⁷.

42. Exclusion of jurisdiction of civil courts.—Except as otherwise provided by this Act no order passed by the [State Government] or the Collector under this Act shall be called in question in a civil court.

66. *L H Sugar Factory v. Moti*, 1941 A 143=1941 A L J 427=195 I C 791.

67. *Baijnath v. Ahmad Musaji Sahji* 40 Cal. 219.

Legislative changes.—Repealed by Section 27 (1) of U. P. Act, XIII of 1940, made by the Governor in exercise of the powers assumed by him under Section 93 of the G. of I. Act, 1935, except in its application to advances made before the 1st day of June, 1940, not being loans as defined in that Act.

Legislative changes.—The words [State Government], [Official Gazette], [Houses of the Legislature of the State] and [either House of the Legislature] were substituted for the words [provl. Govt.], [Chambers of the Provincial Legislature] and [either of the Provincial Legislature, by A. O. 1950 which were substituted for the words [Local Govt.], [Gazette], and [Legislative Council] by A. O. 1937.⁶⁸

SCHEDULE I

Legislative changes.—Schedules I to VI of the Act have all been repealed by Section 27 (1) of U. P. Act, XIII of 1940, made by the Governor in exercise of the powers assumed by him under Section 93 of the G. of I. Act, 1935 except in its application to advances made before the first day of June, 1940, not being loans as defined in that Act.

THE CLASSES MENTIONED IN SECTION 2(2)(h)

Agricultural labourers, general labourers, cowherds, goatherds, dairymen, blacksmiths, carpenters, fishers, hunters, boatmen, barbers, tanners, and leather-workers, scavengers, basket-makers, potters, midwives, watchmen, washermen, weavers or other servants of the village community or any similar class of persons whom the [State] Government may by notification in the [Official Gazette], from time to time include in this schedule.

SCHEDULE II

Percentage rates mentioned in Section 28 by which the prevailing rate of interest should exceed the percentage rate at which the [State] Government borrow from the [Central Government].

Amount of loan	Secured loans		Unsecured loans	
	Compound per cent. per annum with yearly rests	Simple per cent. per annum	Compound per cent. per annum with yearly rests	Simple per cent. per annum
(a) Rs. 500 and under ...	3	5½	7½	10½
(b) Rs. 5½ to Rs. 5,000 ...	2½	4½	6	8
(c) Rs. 5,001 to Rs. 20,000 ...	2	3½	4½	6½
(d) Over Rs. 20,000 ...	1½	2½	3½	5

68. *Bhup v. Ram Bir*, 1943 O W N 383.

SCHEDULE III

Rates of Interest for Section 30

		Secured loans		Unsecured loans	
		Compound per cent. per annum with yearly rests	Simple per cent. per annum	Compound per cent. per annum with yearly rests	Simple per cent. per annum
(a) Rs. 500 and under	...	X plus 2½	X plus 5	X+ 5½	X+ 9½
(b) Rs. 501 to Rs. 5,000	...	X plus 2	X pl 4	X+ 4½	X+ 7½
(c) Rs. 5,000 to Rs. 20,000	...	X plu 1½	X plus 3	X+ 3½	X+ 6½
(d) Over Rs. 20,000	...	X plus 1	X plus 2	X+ 2½	X+ 4½

Note. -- X in this schedule means :—

- (a) For the period from January 1, 1930, or the date on which the loan was taken, whichever was later, till the first date notified under Section 4, a rate of 4½.
- (b) For the period from the first date notified under Section 4 till the date fixed by the [State] Government as the final date to which Section 30 shall apply *the rate for the time being notified under Section 4 in respect of the period for which each such rate is in force* or 4½ per cent. whichever is less.

Legislative changes.—The words in italics were substituted for the words [the rate notified under Section 4 as the rate in force on the date the loan was taken] were substituted by Section 2 of U. P. Act, III of 1935.

Rate of Interest.—The Legislature has laid down in the Schedule maximum rates of interest applicable in case of compound or simple interest. The court can, therefore, only reduce the interest in case of compound interest to the rates applicable to compound interest as provided in the Schedule. It cannot convert compound rate of interest to simple ⁶⁸. Under item (c) of the above Schedule the simple rate of interest on a loan should be 4½ + 3, i. e., 7½ per cent. per annum ⁷⁰.

Rates in Government Notifications are given below :—

(1) 1st January, 1930 to 7th May, 1935	...	4½
(2) 8th May, 1935 to 14th January, 1936	...	3½
(3) From 15th January, 1936	...	3½

SCHEDULE IV

Rate of Interest mentioned in Section 31

Simple interest at the rate notified under Section 4 as in force at the time when the aggregate of interest realized or accrued becomes equal to the sum originally borrowed in the case of secured loans, and 2 per cent. above that rate in the case of unsecured loans.

69. *Bisesar Ram v. Thakur Parasnath*, 1937 A L J 135=1671 C 853.

70. *Ramman Lal v. Kamla Debi*, 1936 A 864.

SCHEDULE V
Scale mentioned in Section 40

Amount or value of the bond	Stamp duty	Registration fee	Copying fee
			Rs. as.
Where the amount or value secured does not exceed Rs 50	0 1	0 1	3
Where it exceeds Rs. 50 but does not exceed Rs. 200.	0 2	0 2	3
Where it exceeds Rs. 100 but does not exceed Rs. 200.	0 4	0 4	4
Where it exceeds Rs. 200 but does not exceed Rs. 300.	0 6	0 6	6
Where it exceeds Rs. 300 but does not exceed Rs. 400.	0 8	0 8	8
Where it exceeds Rs. 400 but does not exceed Rs. 500.	0 12	0 12	10
Where it exceeds Rs. 500 but does not exceed Rs. 600.	1 10	2 4	12
Where it exceeds Rs. 600 but does not exceed Rs. 700.	2 0	2 4	12
Where it exceeds Rs. 700 but does not exceed Rs. 800.	2 6	2 4	12
Where it exceeds Rs. 800 but does not exceed Rs. 900.	2 12	2 4	12
Where it exceeds Rs. 900 but does not exceed Rs. 1,000.	3 2	2 4	12
For every Rs. 250 or part of Rs. 250 above Rs. 1,000 and up to Rs. 3,000.	1 0	0 4	Nil.

SCHEDULE VI

Legislative changes.—Schedule VI was added by Section 4 of U. P. Act No. IX of 1937.

Schedule of court fee payable on plaint under Section 33

			Rs. a.
If the principal amount is less than Rs. 100	...	...	2 0
If the principal amount of loan is not less than Rs. 100 but is less than Rs. 250	...	...	5 0 0
If the principal amount of loan is not less than Rs. 250 but is less than Rs. 500	...	...	7 8 6
If the principal amount of loan is not less than Rs. 500 but is less than Rs. 1,000	...	...	10 0 0
If the principal amount of loan is Rs. 1,000 or above	...	...	15 0 0

Note.—This Schedule was added by Act IX of 1937.

Rules made under the United Provinces Agriculturists' Relief Act, 1934

Published in U. P. Government Gazette, 1935, Part VIII, pp. 339-349 under notification No. 633-Rev. dated 10th August, 1935.

1. If in any proceeding under this Act the creditor alleges that the debtor is not an agriculturist within the meaning of the Act, because the debtor is assessed to more income-tax than that laid down in the second proviso to Section 2 (2) of the Act, then

- (a) If the debtor admits that he was assessed to income-tax either for the last financial year for which assessments have been made by the Income-tax Department or for the year in which the suit was filed or for any of the years in which the loan or loans in suit were advanced, the onus of proving that he was not assessed to more income-tax than that laid down in the second proviso of Section 2 (2) of the Act, in any such year shall be upon the debtor, who can discharge that onus by the production of the chalans or receipts for the income-tax to which he was assessed.
- (b) If the debtor asserts that he was not assessed to income-tax either for the last financial year for which assessments have been made by the Income-tax Department or for the year in which the suit was filed or for any year or years in which the loan or loans in suit were granted, the court shall inquire from the income-tax officer of the circle concerned, whether the debtor was assessed to any income-tax at all in the financial year for which the debtor asserts that he was not so assessed. If the reply is to the effect that some income-tax was assessed in any of those years, then the onus of proving that the amount was not in excess of that laid down in the second proviso to Section 2 (2) of the Act in that year lies on the debtor who can discharge that onus by the production of the chalans or receipts for the income-tax to which he was assessed. (Not. No. 48-Rev. dated 18/19th May, 1936.)

Note.—The present sub-sections (a) and (b) were substituted for the original sections (a) and (b) by notification No. 48-Rev. dated 18/19th May, 1936.

2. An application for redemption presented under Section 12 of the Act shall be in the following form and shall contain the particulars specified therein :

(Given as appendix I page 180.)

[3. The powers of a Collector under Chapter III of the Act are under sub-section (1) of Section 22, hereby conferred on every Assistant Collector of the first class who may, by any general or special order in writing of the Collector, be entrusted within the disposal of applications under that chapter.]

Note.—The present Rule 3 was substituted for original Rule 3 by notification No. 639-(9)/1 dated April 9, 1942.

4. (1) Every creditor shall regularly record and maintain a correct account for each agriculturist debtor of all transactions relating to each loan advanced to that debtor in one or other of the following forms A, B or C :

(Given as appendices II, III and IV pages 181-183.)

Provided that where there is a current account it shall be sufficient for the creditor to keep one account of all transactions relating thereto.

In the term "current account" in this proviso, will be included in the case of banks all accounts, such as overdrafts, cash credits, pronote accounts, etc. which are maintained in the form of current accounts.

(2) As soon as possible after the date on which the Act comes into force the creditor shall open an account in one or other of the prescribed forms A, B or C for each existing loan, whether taken before or after the Act came into force with a statement showing the balance or amount of principal and interest outstanding against the debtor at the date on which the account is opened.

5. The creditor shall not calculate or enter a rate of interest in excess of that admissible under the Agriculturists' Relief Act.

6. Interest on an advance should be worked out up to the date of each repayment towards liquidation of such advance; and, where an advance or any part of it is outstanding at the close of the year, interest should be calculated on the balance of the principal from the date of the last instalment of repayment, if any, to the end of the year:

Provided that in the case of banks the requirements of this rule will be met by their present practice of the entry of decimals in the account on each day that a transaction takes place, and the calculation of interest at periodic intervals on the basis of those decimals.

7. With reference to Section 29 of the Act, where a part-payment is made on an unsecured loan taken after the date on which the Act came into force, the account should be adjusted and interest re-calculated at the secured rate if final payment is made within the specified time.

8. (1) The account of every loan maintained under Rule 4 shall be made up annually and a balance shall be struck on one or other of the following dates:

- (i) the Dasehra festival;
- (ii) the Diwali festival;
- (iii) September 30;
- (iv) December 31; or
- (v) March 31.

(2) The creditor shall record in each account the date selected by him for the purpose of sub-rule (1), and on the first occurrence of that date after the Act comes into force, or after the loan is taken, as the case may be, and thereafter annually on that date the account shall be made up and a balance struck.

9. Within one month after the making up of the account under rule 8 the creditor shall supply each agriculturist debtor every year with a full and correct statement of account of any balance or amount outstanding on each separate loan in the following form D, (*Page 184*) which must include all transactions entered into during the year to which the statement relates:

Provided that where there is a current account it shall be sufficient for the creditor to furnish particulars of the balance due on the whole amount.

In the case of banks, the requirements of this rule will be met if a full statement of the account has been supplied by means of a pass-book or otherwise from time to time throughout the year, and intimation is given, within one month from the date selected for making up accounts, of the amount of the balance remaining due on that date.

10. The statement of account shall be furnished to the debtor by registered post, acknowledgment due. The postal registration and acknowledgment charges shall be recoverable by the creditor as though they were a loan advanced in cash to the debtor, and shall be duly entered in the loan account.

11. Where a debtor has agreed in writing to accept the statement of account by personal delivery, it shall not be incumbent on the creditor to send such statement in the manner prescribed by rule 10. In such cases the debtor shall give a written receipt for each statement of account delivered personally to him.

12. (i) When a scheduled bank makes advances against current accounts, as defined in the proviso to sub-rule (1) to rule 4, the following documents will be deemed to satisfy the requirements of Section 39 of the Act :

(1) A letter from the bank to the borrower giving full details of the limit of the accommodation made available to the borrower and the other particulars required by the Act.

(2) The bank's ledgers.

(ii) For the purposes of sub-section (3) of Section 39, a copy of the bank's letter to the debtor mentioned in (i) above will suffice.

Note.—A scheduled bank included in the second schedule of the Reserve Bank of India Act, 1934.

13. With reference to Section 40, sub-section (2) of the Act, the State Government are pleased to approve the following form (*Page 185*) of bond in respect of which no copying fee shall be leviable if a bond is executed on such form printed under authority of the State Government.

APPENDIX I

**SUBORDINATE JUDGE
IN THE COURT OF THE MUNSFIF OF
COLLECTOR**

applicant,

versus

opposite party,

Application for redemption of mortgage under Section 12 of the
 [Uttar Pradesh] Agriculturists' Relief Act, 1934.

RESPECTFULLY SHEWETH—

mortgagor

1. That the applicant is the representative of the mortgagor of the property sought to be redeemed.

2. That the following are the particulars of the mortgage :

(a) Date _____

(b) Name of the mortgagor _____

Name of the mortgagee _____

(c) Sum secured Rs. _____

(d) Rate of interest _____

(e) Property subject to the mortgage _____

(f) Condition of redemption _____

(g) Amount now due under the mortgage,

(i) by way of principal Rs. _____

(ii) interest Rs. _____

Total Rs. _____

(h) Date on which the principal money became due—

3. (If the applicant is the mortgagor's successor in title, state, facts showing derivation of title.)

4. (If the opposite party is the mortgagee's successor in title, state facts showing derivation of title.)

5. That the applicant is an agriculturist as (state facts showing how the applicant comes within the definition of "Agriculturist").

6. That the mortgagor was at the time of mortgage an agriculturist as (state facts showing how the mortgagee came within the definition of "Agriculturist").

7. That the applicant deposits the said sum of Rupees _____ to the credit of the opposite party.

The applicant, therefore, prays that the said mortgage be redeemed (and possession of the mortgaged property be re-delivered to him).

Verification.

(Signature of applicant.)

APPENDIX III

FORM B

(Rule 4)

Bahi Khata

Loan account of , son of

caste , residence

Date as at which account is made up

C.R. Dr.

(15) (20)

Payment made by Ram Adhin Ram Adhin Pandey is given a loan

on on

.....	Rate of interest,	{ by..... If repaid. after.....
Principal.	Interest.		

Balance, if
any, at the
end of the } Principal. Interest.
year. }

(15)

Ram Adhin Pandey is given a loan
on

Rate of interest, if repaid.	{ by..... after.....
---------------------------------	-------------------------

APPENDIX IV
FORM C
(Rule 4)

(Suitable for banks)
Name of debtor

Resident of

Date as at which account is made up

Date 1	To or By 2	Particulars 3	Rate of interest 4	Dr. Amount 5	Cr. Amount 6	Dr. or Cr. 7	Balance 8	No. of days 9	Decimals 10
1935		Amount advanced on the mortgage-deed dated for Rs at per cent. to be repaid on or before by equal half-yearly instalments of Rs on and each year commencing from Interest is to be paid in addition to the instalments on and in each year							

FORM D

(Rule 9)

Statement of annual account

Loan account of _____, son of _____, for the year ending on _____, cative _____, residence _____

Rate of interest of secured loan on _____

*Rate of interest of unsecured loan (a) if paid by specified date _____
 (b) if paid after specified date _____*

Serial number of loan	Date of loan	Principal amount of loan or balance of principal if brought over from previous year	Amount of interest, if any, brought forward	Payment credited during the year towards			Balance outstanding at the end of the year
				Principal	Interest	Principal	
1	2	3	4	5	6	7	8
							Total for all loans outstanding against the debtor.

Signature of creditor or agent.

FORM OF BOND

I,	..	..	..	..	..
son of	..	..	..	..	..
by caste	..	..	..and residing at	..	..
pargana	..	..	.. tahsil	..	..
district	..	..	..	..	..
Having borrowed Rupees	..	..	..	..	..
(half of which is Rupees	..	..	..	..	..
(or, being liable for Rupees	..	..	..	..	..
(half of which is Rupees	..	..	..	..	..
on account of	..	..	..	..	..
from/to	..	..	..	..	..
son of	..	..	..	..	..
by caste	..	..and residing at	..	..	..
pargana	..	..	.. tahsil	..	..
district	..	..	.. hereby agree as follows :	..	..

1. That I shall repay to the said
..... * his heirs, representatives, successors or assigns the
principal sum of Rupees ..
on demand (or, on the..... day of.....)
and so long as any part of the said principal sum shall remain out-
standing I shall pay simple interest at the rate of..... per cent. per
annum (or, compound interest at the rate of..... per cent. per annum
with yearly rests)

or, that I shall repay to the said
..... * his heirs, representatives, successors or assigns the said
sum of Rupees with interest at the rate of
per cent. per annum in the following instalments

2. That if I repay the said sum of Rupees
on or before the..... day of..... the interest
stipulated in clause 1 shall be reduced to..... per cent. per annum.

Dated the..... day of..... 19

(Signed)

Witnessed by

(1)..... ·

(2).....,.....,.....

Written by

* Name of the creditor.

THE UNITED PROVINCES AGRICULTURAL TENANTS (ACQUISITION OF PRIVILEGES) ACT, 1949

(U. P. Act No. X of 1949 as amend and adopted upto date)

CONTENTS

- | | |
|---|---|
| <ol style="list-style-type: none"> 1. Short title; extent and commencement. 2. Definitions. 3. Tenants entitled to acquire the privileges. 3-A. Acquisition of privileges by sub-tenants. 3-B. Acquisition of privileges by unrecorded co-tenants. 3-C. Acquisition of privileges by recorded and unrecorded co-tenants jointly. 4. Determination of rent payable. 5. Application for acquisition of privileges. 6. Grant of declaration. 7. Privileges consequent upon the grant of declaration. | <ol style="list-style-type: none"> 7-A. Declaration not to affect the share on interest in the holding. 7-B. Recovery of the excess amount. 8. Liability of the State Government for payment to the land-holder. 9. Procedure for payment to the land-holder. 10. Discharge of liability of the State Government. 11. Payment of interest. 12. Cancellation of the declaration. 12-A. Cancellation of the declaration in certain areas. 12-B. Failure to pay the instalment. 13. Appeal. 14. Protection of public servants. 15. Exemption from court fees. 16. Power to make rule. |
|---|---|

[Received the assent of the Governor on August 10, 1949 under Section 75 of the Government of India Act, 1935, as adapted by the India (Provisional Constitution) Order, 1947 and was published in the U. P. Gazette Extraordinary, dated August 11, 1949.]

An Act to provide for payments by tenants with a view to facilitate the abolition of zamindari and to provide for reduction of rent and protection from ejectment and for certain other matters.

WHEREAS it is expedient to provide for payment by tenants with a view to facilitate the abolition of zamindari and to provide for reduction of rent and protection from ejectment and for certain other matters connected therewith;

It is hereby enacted as follows :—

Referatory Note :—Statement of Objects and Reasons of the Principal Act.—(1) the acquisition of intermediaries' rights in vast area of agricultural land comprised in this State is evidently a project of enormous magnitude. In view of the crisis in food production and demands of the situation Government feel that this necessary reform must be speedily accomplished.

2. With the approval of the Legislative Assembly a Zamindari Abolition Fund has already been created. The principles on which the Fund was approved were enunciated thus by the Hon'ble Premier in his budget speech for 1949-50 :

"Out of the current year's surplus we propose to transfer Rs. 1 crore to a fund called the Zamindari Abolition Fund. Our tentative idea is that the savings of tenants should be mobilised for feeding this Zamindari Abolition Fund. A tenant who contributes an amount equal to his 10 years rent will be entitled to a reduction of 50 per cent, on the sum now paid by him as rent and will pay to the State only half

For S.O.R., of U. P. Act No. I of 1951, see footnote No. 1 under Zamindari Reforms Act, 1951 (U.P. Act No. I of 1951), Vol. IV. Abolition and Land S. 340 of this Act runs as follows :—

"340(1). Where any orders have been made, proceedings taken, declarations granted, or jurisdictions exercised under the provisions of the U.P. Agricultural Tenants (Acquisition of Privileges) Act, 1949, the provisions of the said Act shall, notwithstanding anything contained therein, be so read and construed as if the amendments mentioned in Schedule IV had been made therein and were in force from the commencement of the said Act.

(2) For the removal of doubts it is hereby declared that all orders made, proceedings taken, declarations granted and jurisdictions exercised under and at any time during the continuance of the said Act, shall be good and valid in law as if the said Act, as amended by sub-section (1) had been in force at all material dates".

of this sum as revenue. This scheme will at once bring together scattered surplus purchasing power into a pool to be utilized for eliminating middle men and reviving agricultural prosperity. It will exert a healthy downward pressure on inflation by canalizing savings into productive channels. There will remain no legal or other difficulty in our way. There will be no strain on the finances or credit of the State Exchequer and the question of compensation will be settled in a manner that may prove satisfactory to all parties."

3. The Uttar Pradesh Zamindari Abolition and Land Reforms Bill, 1949, has also been introduced in the Legislature. That Bill provides not merely for the abolition of zamindari but also covers a wide range of land reforms. Among other things it provides for voluntary contributions by tenants to the Zamindari Abolition Fund even before the acquisition of intermediaries' rights. It is considered expedient to give immediate effect to this provision.

4. This Bill accordingly provides for voluntary payment by the general body of tenants of ten times their annual rents. Upon such payment they will be entitled to a reduction of their rents by half and will enjoy complete protection from eviction on any ground whatsoever. The balance of their rent will be paid by the State Government. This will in effect give them immediately the substance of bhumidhari rights as contemplated in the Uttar Pradesh Zamindari Abolition and Land Reforms Bill, 1949, and as soon as zamindari is abolished, they will be entitled to a formal declaration of their status, *vide* U. P. Gazette Extraordinary, dated July 8, 1949, pp. 1-6.

Statement of Objects and Reasons of the Amending Act No. VII of 1950.—In order to facilitate the abolition of zamindari the U. P. Legislature passed an Act called the U. P. Agricultural Tenants (Acquisition of Privileges) Act, 1949. The Joint Select Committee when considering the U. P. Zamindari Abolition and Land Reforms Bill, 1949, suggested certain important amendments to the provisions of this Act. Government considered it necessary to bring the amendments into force at once and for this purpose an ordinance named Uttar Pradesh Agricultural Tenants (Acquisition of Privileges) (Amendment) and Miscellaneous Provisions Ordinance, 1950 was promulgated. The Ordinance also provides for the stay of certain proceedings under the U. P. Tenancy and Land Revenue Acts with a view to maintain the status quo between the zamindar and the cultivator, as regards actual possession until the actual abolition of zamindari. This Ordinance was published in Gazette Extraordinary, dated January, 29, 1950 and the Bill is intended to re-enact its provisions, *vide* U. P. Gazette Extraordinary, dated February 8, 1950.

1. Short title, extent and commencement.—(1) This Act may be called the United Provinces Agricultural Tenants (Acquisition of Privileges) Act, 1949.

(2) It extends to the whole of [Uttar Pradesh]¹, except the areas specified in the First Schedule of the United Provinces Tenancy Act, 1939, and the Pargana of Kaswar Raja in the district of Banaras.

(3) It shall come into force at once.

Areas Included:—See Section 1 (4) of the Amendment Act which is given below:—

(4) It extends to the area to which the Principal Act applies. Sections 10 and 11 shall also extend to the area which on the 30th day of November, 1949 was included in the Banaras State as defined in the Banaras State (Administration) Order 1949.

Areas Excluded:—The Act does not apply to areas specified in First Schedule of the U. P. Tenancy Act, 1939, (which for the facility of reference, is given below) and to the pargana of Kaswar Raja in the District of Banaras:—

(The First Schedule, U. P. Tenancy Act).

1. The districts of Almora and Garhwal.
2. In the district of Naini Tal.

(a) the Naini Tal Sub-division.

(b) the following villages of the Tarai and Bhabar Government estates:—

Leg. Ref:

1. Subs. by the A. O. 1950 for [the United Provinces].

PARGANA BAZPUR

Bajawala.	Bhainsia.	Gulzarpur.	Rajpura No. 1
Bannakhera.	Bhajwanagla.	Hazir.	Ratanpuri.
Bannakhera Sani.	Bhikampuri.	Haripura.	Sheopuri.
Banskhera.	Bijai Rampura.	Harsan.	Thapaknagla.
Banskheri.	Chamakpur.	Khamari.	Kalabandwari.
Baraihni.	Golaria Gobra.	Maindaya Hatto.	Faridpur.

PARGANA GUDARPUR

Alakhdei.	Buxaura.	Madnapur.	Pipalia.
Andkhera.	Khanpur Pachcham	Mohali Jungle.	Kopa.
Beria.	Khanpur.	Mukandpur.	Jafarpuri.
Hari Rain.	Kuiha.	Nandpur.	Gadarupuri.
NORTH OF KASHIPUR			
Kamdehpur.	Karailpuri.	Birpur Lachi.	Pipalsana.
Beria.	Theri	Birpur Tara.	
Lalitpur.	Kandala	Rajpur.	

IN KHUSHALPUR CIRCLE

Khushalpur. Lanpur Moti. Lampur Lachi. Shahbazpur.

(c) The Barbar villages in the Tarai and Bhabar sub-division which are settled with zamindars.

Commencement:—The Principal Act came into force on August 11, 1949, when it was published in the Extraordinary Gazette after having received the assent of the Governor on August 10, 1949. It has been amended by Act VII of 1950. The amendments which shall have retrospective effect and shall be deemed to have come into force on the date of the commencement of the Principal Act, have been incorporated at proper places.¹ The Amendment Act has added Sections 10 to 12 which are given after Section 16 of the Principal Act. These sections came into force on 29th January, 1950.

The Act was further amended by the U. P. Zamindari Abolition and Land Reforms Act, 1950, and these amendments have retrospective effect in view of Section 340 read with Schedule IV of the U. P. Zamindari Abolition and Land Reforms Act.

Retrospective Effect:—See sub-sections (2) and (3) of Section 1 of the Amending Act which is given below:—

“(2) Section 1 to 9 of this Act shall be deemed to have come into force from the date of commencement of the (Uttar Pradesh) Agricultural Tenants (Acquisition of Privileges) Act 1949 (hereinafter called the Principal Act); and Sections 10 and 11 shall be deemed to be in force with effect from the 29th day of January, 1950.

(3) For the removal of doubts it is hereby declared that all orders made, proceedings taken, declarations granted and jurisdictions exercised, under and at any time during the continuance of the Principal Act, shall be good and valid in law as if the said Act, as amended by sub-section (2), had been in force at all material dates.”

2. Definitions.—In this Act, unless there is anything repugnant in the subject or context—

- (a) “Assistant Collector” means a person authorized by the [State Government]² to exercise the powers of an Assistant Collector under this Act;
- (b) “land”, “holding”, “rent”, “arrears of rent”, “crops”, “landholder”, “agricultural year”, “tenant”, “tenant holding on special terms in Avadh”, “ex-proprietary tenant”, “occupancy tenant”, “hereditary tenant”, “revenue court”, and “Commissioner” have the meanings assigned to them in the United Provinces Tenancy Act, 1939.

Land—Meaning :—“Land” has been defined in Section 3(10), U. P. Tenancy Act, and means “Land” which is let or held for growing of crops, or as groveland, or for pasture. It includes land covered by water used for the purpose of growing Singhara or other produce but does not include land for the time being occupied by buildings or appurtenant thereto other than buildings which are improvements. Though a part of land is temporarily occupied by stacks of hay or wood, it will still be land¹. Land which is under water for part of a year will not cease to be land². For the meaning of pasture see S. D. 1 of 1922; 10 R. D. 383 and 14 R. D. 338.

Holding Meaning :—It has been defined in Section 3 (7), U. P. Tenancy Act, and means “a parcel or parcels of land held under one lease, engagement or grant, or in the absence of such lease, engagement or grant, under one tenure and in the case of a *thekadar* includes the *theka* area”. A Holding is one engagement³; it may be situated in different mahals⁴; or in different villages⁵ may be partly occupancy and partly non-occupancy⁶ or partly cash rented partly grain rented⁷.

Rent Meaning :—It has been defined in Section 3 (18), U. P. Tenancy Act, and means “whatever is, in cash or kind, or partly in cash and partly in kind, payable on account of the use or occupation of land or on account of any right in land and in Chapter VII, except when the contrary intention appears, include: Sayar; Explanation—A share of the timber or its value deliverable or payable to the land-holder on a sale of trees by a grove-holder is rent”. Rent does not include damages payable by a trespasser⁸; cash and kind both are rent⁹; Rasum Zamindari included in Case¹⁰; payment for a grove¹¹; *Haq-i-chaharum*¹²; dues from grove-holders under *Wajib-ul-urz*¹³ are rent. *Said Matalba* is not rent¹⁴.

Arrears of Rent—Meaning :—See Sections 145 and 146, U. P. Tenancy Act, “Any instalment of rent not paid on or before the day when it falls due become an arrear on the day following the day it fell due”.

Crops-Meaning :—See Section 3 (11), U. P. Tenancy Act. It means “The person to whom rent is, or but for a contract express or implied would be payable, but except in Chapter VII and Chapter XII does not include an assignee of rent or a person who has lost proprietary or other interest by virtue of which rent became payable to him”.

Agricultural Year :—Begins from first of July and ends with thirtieth day of June—Section 3 (2), U. P. Tenancy Act.

Tenant-Meaning :—(Section 3 (23), U. P. Tenancy Act) means “the persons by whom rent is or but for a contract express or implied would be payable and except when the contrary intention appears includes a sub-tenant, but does not include a mortgagee of proprietary or under-proprietary rights, a grove-holder, a rent free grantee, a grantees at a favourable rate of rent or, except as otherwise expressly provided by this Act (U. P. Tenancy Act), an under-proprietor, a permanent lessee or a *Thekadar*”. A tenant of *Sir* is a non-occupancy tenant¹⁵. In the absence of a contract of tenancy, the recording of a person as sub-tenant or that he had been assisting in cultivation will not confer on him tenancy rights¹⁶.

Tenant holding under special terms in Avadh :—See Section 25, U. P. Tenancy Act. It means “every tenant in Avadh holding under a special agreement or a judicial decision made or passed before the passing of the Avadh Rent Act, 22 of 1886, shall be called a tenant holding on special terms”¹⁷.

Exproprietary tenant—Meaning :—Exproprietary tenant is defined by Section 26 of the U. P. Tenancy Act which is given below:—

“26. (1) When the landlord of the whole of a *mahal* or of a special area in a *mahal* transfers the whole of voluntary alienations otherwise than under the provi-

Case Law :

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| 1. 1942 R. D. 235; 1944 R. D. 491. | 10. 1943 R. D. 485. |
| 2. 1944 R. D. 69. | 11. 1941 R. D. 598. |
| 3. 1926 A. L. J. 599; 1945 R. D. 353. | 12. 1945 R. D. 194. |
| 4. 1935 R. D. 442. | 13. 1947 R. D. 13. |
| 5. 1946 R. D. 136. | 14. 1941 R. D. 265; 1143 R. D. 545. |
| 6. 1935 R. D. 380. | 15. 1933 R. D. 126. |
| 7. 509 of 1193. See also 11 R. D. 301 and 8 R. D. 144. | 16. 1944 R. D. 69; See also 1936 R. D. 522; 1941 R. D. 1067; 1944 R. D. 44 and 1941 R. D. 358. |
| 8. 1934 R. D. 45. | 17. 1944 R. D. 2; 1943 R. D. 555. |
| 9. 1944 R. D. 457. | |

sions of sub-rights in such *mahal* or area is transferred by foreclosure or sale in execution of a decree or order of a Civil or Revenue Court; the landlord shall become an exproprietary tenant of his *sir* and of such portion of his *Khudkasht* as he has cultivated continuously for three years at the date of transfer.

(2) When the landlord of a share in a mahal or in a specific area is a mahal so transfers the whole of such share or when such share is so transferred the landlord shall become an exproprietary tenant of his *sir* and of such portion of his *Khudkasht* is demarcated by the officer empowered to fix the rent of the holding under the provisions of Section 36 of the United Provinces Land Revenue Act, III of 1901.

(3) When the landlord of the whole or of a share of a *mahal* or of a specific area in a *mahal* so transfers a part of such whole or of such share or of such area, or when a part of such whole or of such share or of such area is so transferred, the landlord shall become an exproprietary tenant of so much of his *sir* and of such portion of his *Khudkasht* as he has cultivated continuously for three years at the demarcated by the officer empowered to fix the rent of the holding under the provisions of Section 36 of the United Provinces Land Revenue Act, 1901.

(4) If in the course of proceedings under this section the officer empowered to fix the rent of the holding finds that any of the landlord's *sir* is land to which the provisions of the third proviso to clause (a) of Section 6 apply, or that the landlord is a *sir*-holder to whom the provisions of sub-section (2) of Section 15 apply, he shall stay proceedings under the section and shall proceed under the provisions of Section 6 or Section 16, as the case may be, and the provisions of this section regarding *sir* shall not apply to any area in which he orders that the tenants are hereditary tenants.

(5) Every person who becomes an exproprietary tenant under the provisions of this section or who, at the commencement of this Act, is an exproprietary tenant in accordance with the provisions of any previous Act or who is or becomes an exproprietary tenant under any other enactment for the time being in force shall be entitled to all the rights conferred and be subject to all the liabilities imposed on exproprietary tenant by this Act and unless the rent payable by him was fixed under the provisions of a previous Act, it shall be fixed in accordance with the provisions of this Act by the Officer empowered to do so under the provisions of Section 36 of the United Provinces Land Revenue Act, 1901.

(6) A mortgage shall be deemed to be a transfer within the meaning of this section when it has the effect of transferring proprietary possession of the mortgaged property from the mortgagor, but not otherwise.

(7) No right shall accrue under this section in any land transferred for any public or private purpose inconsistent with the existence of a right of cultivation therein.

(8) For the purposes of this section the word "Landlord" shall include an under-proprietor and a permanent tenure-holder and the words "proprietary right" shall include the right of an under-proprietor and of a permanent tenure-holder.

(9) Notwithstanding anything in this section exproprietary rights shall not accrue in grove-land.

Occupancy Tenant :—Section 28, U. P. Tenancy Act—"Every tenant, who is not a fixed-rate tenant or an exproprietary tenant and who, at the commencement of this Act, has acquired a right of occupancy under the Agra Tenancy Act, 1926, or any previous enactment relating to Agra or under the Avadh Rent Act, 1886 shall be called as occupancy tenant." Occupancy rights do not accrue in *sir*⁸¹ and admission as co-tenant to an occupancy holding would invest occupancy right¹⁹. For other illustrative cases see cases cited under footnote²⁰.

Hereditary Tenant—Meaning :—The status of a defacto tenant with the consent of the landlord holding at the commencement of the Act is that of hereditary tenant²¹—tenant of *sir*, wrongly recorded as such is hereditary.²² Lease of pasture land confers, statutory rights under the Avadh Rent Act, and hence hereditary tenant—so

Case Law :

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| 18. 1948 R D 26.
19. 1941 R D 550,
20. 1938 R D 653; 1945 R D 306; and | 1942 A W R 264.
21. 1942 R D 344.
22. 1941 R D 785. |
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also tenants from rent-free grantee.²³ See also explanation II (ii) of Section 3 of this Act.

Hereditary tenant is defined by Section 29 of the U. P. Tenancy Act which is given below :—

Every person belonging to one or another of the following classes shall be a hereditary tenant, and subject to any contract which is not contrary to the provisions of Section 4 shall be entitled to all the rights conferred, and be subject to all the liabilities imposed on hereditary tenants by this Act, namely :—

- (a) Every person who is, at the commencement of this Act a tenant of a land otherwise than as a permanent tenure-holder, a fixed rate tenant, a tenant holding on special terms in Oudh; an ex-proprietary tenant, an occupancy tenant, or except as otherwise provided in the Act as a sub-tenant or a tenant of *sir*;
- (b) every person who is, after the commencement of this Act, admitted as a tenant otherwise than as a tenant of *sir* or as a sub-tenant;
- (c) every person who, in accordance with the provisions of this Act, acquires hereditary rights.

Explanation :—For the purposes of this section, 'sub-tenant' does not include a person who holds lands from a relation, dependent, or servant of the land-holder, unless sub-relation dependent or servant proves to the satisfaction of the Court that he is a genuine tenant of such land and has not been admitted to prevent the accrual of hereditary rights in favour of sub-person.

Revenue Court—Meaning :—See the U. P. Land Revenue Act III of 1901.

Commissioner :—See the U. P. Land Revenue Act III of 1901.

3. Tenants entitled to acquire the privileges.—²⁴[(1) Whoever being—

- (a) a tenant holding on special terms in Avadh,
- (b) an ex-proprietary tenant,
- (c) an occupancy tenant,
- (d) a hereditary tenant, or
- (e) an occupier,
- (f) a sub-tenant referred to in sub-section (4) of Section 47 of the United Provinces Tenancy Act, 1939, of land (other than land specified in the schedule) pays to the credit of the State Government an amount equal to—
 - (i) where it is paid in a lump sum, ten times, and
 - (ii) where it is paid in instalments as laid down in sub-section (4), twelve times,

the annual rent payable or deemed to be payable by him in respect of the holding shall, on an application made by him in that behalf to the Assistant Collector, be entitled to a declaration with effect from the date on which the amount or the first instalment, as the case may be, has been deposited, that he has become entitled to the privileges provided by or under this Act.]

²⁵[*Explanation I.* Where a holding is jointly held by two or more tenants, the rent payable by any tenant shall, for the purposes of this section, be deemed to be an amount proportionate to his share therein.]

Case Law :

23. 1941 R D 196.

Leg. Ref.:

24. *Subs.* by item 1 of Sch. IV of U.P.

Act I of 1951.

25. *Subs.* by Section 2 of U. P. Act VII of 1950.

²⁸[Explanation II.—For the purposes of this section the expression—

- (i) “Occupier” means an occupier ²⁹[recorded in the record-of-rights for 1356 Fasli] of any land which on the date immediately preceding the date of declaration under Section 6 is not included in the holding of a permanent tenure-holder, permanent lessee in Avadh, tenant, grove-holder, rent-free grantee, grantee at a favourable rate of rent***²⁸, or which is not in the personal cultivation of a thekadar or a mortgagee,²⁹(or which is not *sir* or *khudkasht* of a landlord, who on the said date is assessed in Uttar Pradesh to a land revenue of Rs. 250 or less annually or where no land revenue is assessed to a lesser amount of local rate than would be payable on land revenue of Rs. 250 annually.)]
- (ii) “Hereditary tenant” includes a tenant of *sir* holding from a *sir* holder who, on the date immediately preceding the date of declaration under Section 6, is assessed in Uttar Pradesh to a land revenue exceeding Rs.250 annually or where no land revenue is assessed, to a local rate exceeding the amount which would be assessed on a land revenue of Rs.250 annually.]

³⁰[(2) Notwithstanding anything contained in sub-section (1), in the case of a holding held jointly by two or more tenants, anyone of them may pay the amount referred to in the said sub-section on behalf of all other tenants in the holding.]

³¹[(3) It shall be sufficient for the purposes of sub-section (1) if the applicant instead of paying the amount in cash makes an application to the Assistant Collector stating that the amount of any bond issued in favour of the applicant as balance of price of sugarcane supplied by him to a sugar factory may be treated as deposit of the amount referred to in sub-section (1).]

⁴[(4) In cases to which clause (ii) of sub-section (1) applies, the applicant may, if the application is made—

- (a) before the first day of March, 1951, pay the amount in four equal instalments, that is to say—

First instalment	.. Along with the application.
Second instalment	.. June 30, 1951
Third instalment	.. February 28, 1952.
Fourth instalment	.. June 30, 1952.

- (b) before the first day of July, 1951, but after the last day of February, 1951, pay the amount in three equal instalments, that is to say—

First instalment	.. Along with the application.
Second instalment	.. February 28, 1952.
Third instalment	.. July 30, 1952.

Leg. Ref:

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| 26. Add. by S. 2 of U. P. Act VII of 1950. | IV of U.P. Act I of 1951. |
| 27. Add. by item 2 of Sch. IV of U.P. Act I of 1951. | 29. Add. by <i>ibid.</i> |
| 28. The words (or which is not <i>sir</i> or <i>khudkasht</i>) omit. by item 2 of Sch. | 30. Add. by Section 2 of U. P. Act VII of 1950. |
| | 31. Add. by item 3 of Sch. IV of U. P. Act I of 1951. |

(c) before the first day of March, 1952, but after the last day of June, 1951, pay the amount in two equal instalments, that is to say—

First instalment .. Along with application.
Second instalment .. June 30, 1952:

Provided that the Assistant Collector may on the application of the applicant extend the date fixed for the payment of the second and subsequent instalments so however that the date so extended shall not be later than the 30th day of June, 1952.]

Scope :—This section as originally framed did not allow a piecemeal acquisition of rights. The amendment has, however, allowed a joint tenant to pay according to his share and acquire the rights contemplated by the Act. In case he pays the entire money, he can claim compensation under Section 6. See also Section 3-A and 3-B for piecemeal acquisition.

Sub-Tenant :—Under clause (f) of the section a sub-tenant under sub-section (4) of Section 47 of the U. P. Tenancy Act also has been authorised to obtain privileges under the Act. This sub-section is given below for facility of reference :—

"47 (4).—Where, at the time of the extinction by surrender or abandonment or by death without any heir entitled to inherit such interest, of the interest in a holding of a tenant other than a permanent tenure-holder or fixed-rate tenant there is in existence a valid sub-lease of the whole or of a portion of the holding, executed on or after the first day of January, 1902; all covenants, binding and enforceable as between the tenant and the sub-tenant shall, subject to the provisions of sub-section (5), be binding and enforceable as between the tenant's land-holder and the sub-tenant for the remainder of the term of the sub-lease or for five years, whichever period may be the shorter.

Occupier :—The definition of occupier has been considerably changed, so as to bring it in line with the definition of "Occupant" in the U. P. Zamindari Abolition and Land Reforms Act, 1950. See commentary on "Occupant" under the U. P. Zamindari Abolition and Land Reforms Act.

32[3-A. Acquisition of privileges by sub-tenants.—(1) Where a part only of the holding belonging to a person mentioned in clauses (a) to (d) of sub-section (1) of Section 3 is held by a sub-tenant, such person may, on payment of ten times the amount of rent payable for the remainder of the holding (such amount to be determined by the Assistant Collector) make an application under the said sub-section in respect of the remainder, and the provisions of Sections 4 to 7 shall apply to such application as if the remainder were a separate holding.

(2) The provisions of sub-section (1) of Section 3 shall have effect in the case of a sub-tenant also as if he were a tenant of the land held by him :

Provided that no application shall be made thereunder except with the written consent of the land-holder and that the amount to be paid to the State Government shall be fifteen times the rent payable for the land by the land-holder or if the land-holder so further agrees, ten times of such rent.

Explanation.—The expression "rent payable" in sub-sections (1) and (2) means the rent as may be fixed by the Assistant Collector having regard to—

- (i) the rent payable for the entire holding by the land-holder,
- (ii) the portion thereof held by the sub-tenant, and
- (iii) the nature and quality of such portion.

(3) Where a declaration has been granted to a sub-tenant in accordance with Sections 3-A and 6, the land-holder shall be deemed, notwithstanding anything contained in any law or contract, to have surrendered such land and the sub-tenant to have become the hereditary tenant thereof liable to pay an amount on account of rent which shall be equal to the amount determined in accordance with the explanation to Section 3-A.

Scope :—This section permits piecemeal acquisition by tenants, who have sub-let a portion of their holding with respect to the land not sub-let. It also confers a right on sub-tenants, who for the purpose of the Act would be treated as tenants except that he shall have to obtain the written consent of the tenant-in-chief and shall have to deposit fifteen times the rent payable by the tenant. When the money has been deposited by the sub-tenant and a declaration has been made under Section 6, the tenant shall be deemed to have surrendered his rights.

¹[**3-B. Acquisition of privileges by unrecorded co-tenants.—(1)** Any person claiming to be entitled as co-tenant of a holding along with the recorded tenants thereof but whose name is not recorded in the record-of-rights relating thereto may apply under Section 3 for a declaration in respect of the whole holding or his share therein.

(2) No application under sub-section (1) shall be granted unless the tenants whose names are recorded in the record-of-rights give their consent in writing.

(3) If the application is allowed the Assistant Collector shall order the name of the applicant to be recorded as a co-tenant and all the provisions of Sections 4 to 16 shall apply to him as if he had been a tenant whose name was already entered in the record-of-rights.]

Scope :—This section is analogous to Section 3-A and entitles a co-tenant, who is not recorded, to obtain the rights under the Act with the consent of the recorded tenant.

³³[**3-C. Acquisition of privileges by recorded and unrecorded co-tenants jointly.—(1)** In the case of a holding belonging jointly to two or more persons as tenants but the name of some only of the tenants being entered in the record-of-rights, the person recorded may, in the application under Section 3, request the Assistant Collector to grant the declaration in favour jointly of himself and such person.

(2) The Assistant Collector shall thereupon issue a notice to such other person and if in reply to the notice such other person appears and consents that he is a tenant, he shall grant the declaration jointly in favour of both.]

Note :—This section is also akin to the two previous sections.

4. Determination of rent payable.—³⁴[(1)] For the purposes of this Act, the amount of annual rent payable for any land shall be deemed to be—

(a) where the applicant or his predecessor-in-interest was the tenant of the land in the *Fasli* year 1355, the rent payable for that year provided that, if the rent has been subsequently enhanced or abated under or in pursuance of a decree or order of a court, the rent so enhanced or abated;

33. Add by Section 3 of U. P. Act VII of 1950.

34. The existing Section 4 was re-numbered as sub-section (1) and a new cl. (e) was add. by Section 4 of *ibid.*

- (b) where he or his predecessor-in-interest was not a tenant of the land in the *Fasli* year 1355 but has been admitted to it by the land-holder on or after the first day of July, 1948, the rent agreed upon between him and the land-holder or the rent determined at hereditary rates applicable at the said date, whichever is higher;
- (c) where land is held but the rent has not been agreed or otherwise fixed, the rent determined at hereditary rates applicable at the date aforesaid;
- (d) where rent is payable in kind, or based on an estimate or appraisement of the standing crop, or on rates varying with the crop sown or partly in one of such ways and partly in another or other of such ways, the rent commuted in accordance with the law for the time being in force;
- ³⁵ [(e) where rent payable varies with the area sown or according to the custom of Balpanchat, the rent equal to an amount which shall be average of the annual rent paid during the last ten years preceding the commencement of this Act.]

[⁽²⁾ where the rent payable, or deemed to be payable, by a tenant is more than double the amount computed at hereditary rates applicable, the rent payable shall, for the purposes of sub-section (1), be such amount not exceeding double the amount aforesaid as the Assistant Collector may determine to be just and proper.]

Note :—For the determination and modification of rent see Chapter VI of the U. P. Tenancy Act, 1938.

5. Application for acquisition of privileges.—(1) The application under Section 3 shall be accompanied by

- (a) a treasury chalan showing that the applicant has duly deposited the amount referred to in the said section; and
- (b) an extract from the *khatauni* showing the plot or plots to which the application relates, the rent payable therefor, and the class of tenants to which the applicant belongs.

(2) The application shall contain such other particulars and be in such form as may be prescribed.

6. Grant of declaration.—(1) Where the application is in proper form and duly presented, the Assistant Collector may, if he thinks fit, examine the applicant or any other person considered necessary by him regarding the merits of the case or the details of the plot or plots in respect of which the declaration is asked for.

(2) If the Assistant Collector is, after examination, if any, under sub-section (1), satisfied that the application is *prima facie* entitled to the declaration and the amount deposited by him is not less than ten times the rent ³⁶ [payable by him in respect of his share in the holding,] he shall grant the same, and in any case where the amount deposited is more than ten times the rent aforesaid, direct the excess to be refunded.

(3) If the Assistant Collector finds that the applicant is otherwise

35. The existing Section 4 was remembered as sub-section (1) and a new cl. (e) was add. by Section 4 of *ibid.*

36. Add. by Section 5 of U.P. Act VII of 1950 for [of the plots].

37. Subs. by Section 5 of *ibid.*

entitled to the declaration but the amount deposited is less than ten times the ³⁷[rent payable by him in respect of his share in the holding,] he shall inform the applicant that he may deposit the balance within the time allowed.

(4) Where the balance has been deposited within the time allowed, the Assistant Collector shall grant the declaration.

(5) Where the applicant fails to deposit the balance within the period allowed, the Assistant Collector may dismiss the application and direct that the amount, if any, deposited by the applicant be refunded to him.

(6) In any case where the Assistant Collector is not satisfied that the applicant is a person belonging to any of the classes mentioned in Section 3, he shall dismiss the application and direct the refund of the amount deposited.

(7) No application shall be rejected on the ground merely that it does not fulfil the requirements of clause (b) of sub-section (1) or sub-section (2) of Section 5, but the Assistant Collector shall grant the applicant an opportunity to comply with the same.

³⁸[(8) In the case of a holding held jointly by two or more persons as tenants, the declaration shall—

(a) where the amount has been deposited in accordance with sub-section (1) of Section 3, be granted in favour of the applicant only in respect of his proportionate share in the holding, and

(b) where the amount has been deposited in accordance with sub-section (2) thereof, be granted in favour of all the co-tenants jointly.]

(9) Where, in the case of a holding held jointly by two or more persons, any one of them has paid the amount on behalf of other or others, such other or others shall upon the grant of the declaration under sub-section (8) be liable to pay to the former their share of the same.

Declaration—No possession—Effect :—A tenant who is out of possession, cannot, by merely depositing ten times of the rent and by obtaining a declaration under the section, be entitled to recover possession of the land automatically without obtaining a decree from a competent court ³⁹.

⁴⁰[7. **Privileges consequent upon the grant of declaration.**—⁴¹[(1)] Upon the grant of the declaration under Section 6, the applicant shall, with effect from the date of payment under Section 3 or deposit under sub-section (4) of Section 6, as the case may be, be entitled to the following privileges, that is to say—

(a) The applicant shall, notwithstanding anything in the United Provinces Tenancy Act, 1939, not be liable to ejection in execution of any decree or order for ejection or any decree for payment of arrears of rent—

(i) where the amount has been deposited under sub-section (2) of Section 3, from the holding or any portion thereof,

38. Subs. by Section 5 of U. P. Act VII of 1950.

39. *Sonpat v. Roban Singh*, 1951 R.D. 165.

40. Subs. by Section 6 of U.P. Act VII of 1950.

41. Add. by item 4 of Sch. IV of U. P. Act I of 1951.

- (ii) where the amount has been deposited under sub-section (1) of section 3, from the holding or such portion thereof as shall be proportionate to his share in the holding.
- (b) Notwithstanding anything contained in any law or contract, the applicant, or if it is a case to which sub-section (2) of Section 3 applies, all the tenants jointly of the holding, shall in respect of every instalment of rent falling due after the date aforesaid be liable to pay on account of such instalment the amount which shall be equal to one-half of the amount payable, as the case may be, by the applicant or the tenants jointly and the balance shall be deemed, on the date on which the instalment falls due, to have been deposited by him or them with the State Government :

Provided that in cases where the payment aforesaid is made on or before the 31st day of December, 1949, the benefit of this clause shall extend to instalments falling due between first day of October, 1949, and thirty-first day of December, 1949 :

Provided further that in cases where the payment aforesaid is made between the first day of January, 1950 and the 28th day of February, 1950, the tenants shall be liable to pay on account of the instalment falling due between the first day of October, 1949 and thirty-first day of December, 1949, an amount equal to three quarters of the amount payable and the remainder alone shall be deemed to have been deposited with the State Government].

⁴³[(c) The applicant shall, except as hereinafter excepted, be entitled, notwithstanding anything contained in the U. P. Tenancy Act, 1939, or any contract, to bequeath by will or transfer by way of sale, simple mortgage or gift his interest in the holding or his share therein.

Exception--In cases falling under clause (ii) of sub-section (1) of Section 3 the privilege conferred by this clause shall not accrue until all the instalments have been paid in accordance with the said section]

⁴³[(2) The principles contained in the provisos to sub-section (1) shall apply in respect of any instalments falling due on or after January 1, 1950, subject to such alterations, modifications or adaptation as the State Government may notify.]

Declaration—Effect :—The declaration under Section 6 does not oust the jurisdiction of courts to adjudicate upon the rights of the parties. The declaration is always subject to the decree or order passed by a competent Court in respect of the holding in question. It cannot, therefore, take away the jurisdiction of the competent Courts to adjudicate upon the rights of the persons interested and concerned with that holding. Section 7 (a) (1) does not say that no decree or order for his ejection will be passed by any Court of competent jurisdiction, it merely prohibits the execution of the decree or order. On the basis of this decree or order it would be proper for the Assistant Collector to cancel the declaration, and it cannot be executed after such a declaration.⁴⁴ Where during the pendency of an appeal in a line under Section 180 of the U. P. Tenancy Act, the plaintiff obtains a declaration under Section 6, it would not bar the hearing of the appeal.⁴⁵

Leg. Ref.:

42. Add. by item 4 of Sch. IV of U. P.

Act 1 of 1951.

43. Add. by item 5 of Sch. IV of ibid.

Case Law:

44. *Purnamashi Singh v. KharGattu,*

1951 R D 172; *Hanif v. Waqt*

Banam Khudawand Karim, 1951

R D 211.

45. *Sonpat v. Roban Singh*, 1951 R D

165.

"[7-A. Declaration not to affect the share on interest in the holding.—No person shall, by virtue of any declaration made under Section 6, be entitled to any larger share in the holding than to which he may have been otherwise entitled and notwithstanding the declaration the interest of any other tenant in the holding shall continue unaffected.]

"[7-B. Recovery of the excess amount. —Where any person has, whether before or after the date of grant of declaration under Section 7, paid to his land-holder on account of rent of the land in respect of which the declaration has been granted an amount in excess of the amount which he was liable to pay under clause (b) of the said section he may apply to the Assistant Collector for the recovery of the excess amount.]

8. Liability of the State Government for payment to the land-holder.—(1) The [State Government]⁴⁸ shall be liable to pay to the person entitled to receive the amount deemed to have been deposited under clause (b) of Section 7 on an application made by him to the Assistant Collector under this section or without such application *suo moto* in the manner prescribed.

(2) Notwithstanding anything in any law, no suit or proceeding shall, except as provided in this Act, lie in any court whether civil or revenue for the recovery of the said amount.

9. Procedure for payment to the land-holder.—(1) On receipt of the application mentioned in Section 8, the Assistant Collector shall, where the applicant is not the person specified in the application under Section 3 or where the Assistant Collector has reason to doubt the right of the applicant to receive the amount, cause a notice to be served free of charge on the person specified in the application under Section 3 and any other person who may *prima facie* appear to him to be entitled to the amount aforesaid.

(2) After hearing the person or persons who may appear to reply to the notice, the Assistant Collector shall pay the amount to the person who, in his opinion, is best entitled to it :

Provided that in any case where he cannot decide the right to the amount without determining questions of law or fact too intricate and difficult for determining in a summary proceeding, he may withhold the payment and direct the parties to establish their rights by taking proceedings in the proper court.

10. Discharge of liability of the State Government. —The payment by the [State Government]⁴⁸ of the amount deemed to be deposited under Section 7 in accordance with any order passed under Section 9 shall be full discharge of the liability of the [State Government]⁴⁸ to make such payment to the person as may have a rightful claim, but shall not prejudice the right in respect of such amount to which any other person may be entitled, by due process of law to enforce against the person to whom such payment is made.

Leg. Ref:

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| 46. Add. by Section 7 of U. P. Act VII of 1950.
47. Add. by item 6 of Sch. IV of U.P. | Act I of 1951.
48. Subs. by the A. O. 1950 for [Prov. Govt.] |
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11. Payment of interest. - Notwithstanding anything contained in the United Provinces Tenancy Act, 1939, the [State Government]⁴⁹ shall not be liable for the payment of any interest on any amount payable by it under the provisions of this Act.

12. Cancellation of the declaration. - (1) A declaration granted under Section 6 may, on the application of any person interested, be cancelled ⁵⁰[or modified] by the Assistant Collector for any of the following reasons, namely—

- (a) that the declaration was obtained fraudulently by the making of a false suggestion or, by the concealment from the Assistant Collector of something material to the case;
- (b) that the declaration was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant thereof, though such allegation was made in ignorance or inadvertently;
- ((c) that a decree or order passed by a competent court in a suit or other proceeding with respect to the holding for which the declaration has been granted shows that the applicant under Section 3, 3-A, 3-B or 3-C was not entitled to the declaration under Section 6.]⁵¹

(2) Where the declaration is cancelled under sub-section (1), the person who deposited the amount referred to in Section 3 shall be entitled to its refund :

Provided that any amount paid in accordance with the provisions of this Act, by the [State Government]⁵² as a result of the declaration shall be deducted from it.

Scope:—Any person interested can get a declaration obtained under Section 6 on the basis of a *prima facie* title cancelled or modified for reasons mentioned in the section. It may be noted here, that these reasons are very wide in their scope. It is thus clear that if, on the one hand, such a declaration can be obtained behind the back of other persons on the basis of *prima facie* title, they on the other hand can be got cancelled or modified for a variety at reasons by any person interested in the matter ⁵³. A person obtaining Bhumi-dahri Sanad on the basis of a declaration under Section 6 can be ejected only after the declaration has been cancelled under this section. ⁵⁴.

54[12-A. Cancellation of the declaration in certain areas. - Where an area has ceased to be part of Uttar Pradesh in pursuance of the Provinces and States (Absorption of Enclaves) Order, 1950, and a declaration under Section 6 had before the date of the commencement of the said order been granted to a person in respect of the area or portion thereof the declaration shall with effect from the said date be deemed to have been cancelled and the provisions of sub-section (2) of Section 12 shall apply thereto as if it had been cancelled under sub-section (1) of the said section.]

55[12-B. Failure to pay the instalment - Where a declaration under Section 6 has been granted on an application made under

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| 49. Subs. by the A. O. 1950 for [Prov. Govt.], | 52. <i>Purnamashi Singh v. Kharpatu</i> , 1951 R D 172, |
| 50. Ins. by Section 8 of U. P. Act VII of 1950. | 53. <i>Dharam Pal v. Buddhu</i> , 1953 A W R 106 (Rev). |
| 51. Subs. by Section 3 of U. P. Act XXIII of 1951. | 54. Add. by item 7 of Sch. IV of U. P. Act I of 1951. |
| | 55. Add. by item 8 of <i>ibid</i> . |

clause (ii) of sub-section (1) of Section 3 and the applicant has failed to pay any instalments on or before the due date or the date extended under the proviso to sub-section (4) of Section ?, the declaration shall with effect from the date of default stand cancelled and the provisions of sub-section (2) of Section 12 shall apply as if the declaration had been cancelled under sub-section (1) thereof and the following further proviso had been added :

Provided that an amount equal to 5 per cent. of the amount of deposit shall be deducted as incidental charges.] .

13. Appeal.—(1) An appeal against an order passed by the Assistant Collector under sub-section (6) of Section 6 or Section 12 shall lie to the Commissioner and the order passed in appeal by the Commissioner shall be final.

(2) An appeal under sub-section (1) shall be preferred within thirty days of the order appealed against.

Revision—If maintainable :—The order passed in appeal by the Commissioner is final, and no revision lies to the Board.⁵⁶ The power of revision exercisable by the Board is derived from statute. There is no general principle or authority by which this power is invoked or exercised. There is no provision in this Act under which this power can be exercised, and as such no revision will lie.⁵⁷ The order of the Commissioner in an appeal under this section cannot be deemed to be an order the U. P. Tenancy Act to which Section 275 may apply.⁵⁸

14. Protection of public servants.—No suit, prosecution or other proceeding shall lie without the previous sanction of the [State Government]¹ against any person for any act done or purporting to be done under this Act or any rule made thereunder.

15. Exemption from court fees.—Notwithstanding anything contained in the Court Fees Act, 1870, no court fee shall be payable on any application or other document or copies filed or produced in any proceedings under this Act.

16. Power to make rules.—(1) The [State Government]⁵⁹ may make rules for the purpose of carrying into effect the provisions of this Act.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for—

(a) The form of application under Section 3 and the manner of filing it :

⁶⁰[(aa) the procedure to be followed in proceedings under Sections 3-A and 3-B ;]

(b) the procedure to be followed in determining the rent under Section 4 ;

(c) the granting of copies or extracts of *khataunis* for purposes of Section 5;

(d) the procedure to be followed by the Assistant Collector in the proceedings for the grant of declaration under Section 6 ;

Case Law :

56. *Behari v. Ramgati Ahir*, 1951 R D 276.
 57. *Bishwanath v. Shambho Nath*, 1952 A W R 6 (Rev).
 58. *Pirthi v. Munshi*, 1951 R D 263.

Leg. Ref.:

59. Subs. by the A. O. 1950 for [Provl. Govt.l.
 60. Add. by Section 9 of U. P. Act VII of 1950.

- (e) the form of the declaration under Section 6 ;
- (f) the form of the application under Section 8 and the manner of its filing ;
- (g) the procedure for hearing and disposal of the application under Section 9 ;
- (h) the procedure for payments to be made to the land-holder under Section 9 ;
- (i) the procedure to be followed in the proceedings relating to cancellation of the declaration under Section 12 ;
- (j) the procedure to be followed in appeals under Section 13 ;
- (k) the fees to be paid in respect of appeals and applications under this Act ;
- (l) the transfer of proceedings from one authority or officer to another ;
- (m) the delegation of powers conferred by this Act on any authority or officer ; and
- (n) the matters which are to be and may be prescribed.

SCHEDULE

(Section 3)

(a) Land owned by the Central Government, [State Government]¹ or any local authority.

(b) land held for a public purpose or a work of public utility or acquired under the Land Acquisition Act, 1894, the United Provinces Land Acquisition (Rehabilitation of Refugees) Act, 1948, the United Provinces Acquisition of Property (Flood Relief) Temporary Powers Act, 1948 or any other enactment relating to acquisition of land for a public purpose, or

(c) land comprised in any area included in or which has been or may hereafter be declared as a municipality or notified area under the provisions of the United Provinces Municipalities Act, 1916, or a cantonment under the provisions of the Cantonment Act, 1924, or a town area under the provisions of the United Provinces Town Areas Act, 1914.

UTTAR PRADESH AGRICULTURAL TENANTS (ACQUISITION OF PRIVILEGES) (AMENDMENT) AND MISCELLANEOUS PROVISIONS ACT, 1950.¹

(U. P. Act No. VII of 1950)

[Received the assent of the Governor on March 16, 1950 and the English translation was published in the U. P. Government Gazette, dated June 17, 1950.]

An Act to amend the United Provinces Agricultural Tenants (Acquisition of Privileges) Act, 1949, and to make certain other miscellaneous provisions with a view to facilitate the abolition of zamindari.

1. For S. O. R. and other particulars, see footnote no 1. under the U. P.

Agricultural Tenants (Acquisition of Privileges) Act, 1949.

WHEREAS the Uttar Pradesh Agricultural Tenants (Acquisition of Privileges) (Amendment) and Miscellaneous Provisions Ordinance, 1950 was promulgated to amend the United Provinces Agricultural Tenants (Acquisition of Privileges) Act, 1949, and to make certain other miscellaneous provisions with a view to facilitate the abolition of zamindari;

AND WHEREAS it is expedient to replace the said Ordinance by an Act of the Legislature:

It is hereby enacted as follows:

1. Short title, extent and commencement.—(1) This Act may be called the Uttar Pradesh Agricultural Tenants (Acquisition of Privileges) (Amendment) and Miscellaneous Provisions Act, 1950.

(2) Sections 1 to 9 of this Act shall be deemed to have come into force from the date of commencement of the United Provinces Agricultural Tenants (Acquisition of Privileges) Act, 1949 (hereinafter called the Principal Act), and Sections 10 and 11 shall be deemed to be in force with effect from the 29th day of January, 1950.

(3) For the removal of doubts it is hereby declared that all orders made, proceedings taken, declarations granted and jurisdiction exercised, under and at any time during the continuance of the Principal Act, shall be good and valid in law as if the said Act, as amended by sub-section (2), had been in force at all material dates.

(4) It extends to the areas to which the Principal Act applies. Sections 10 and 11 shall also extend to the area, which on the 10th day of November, 1949 was included in the Banaras State as defined in the Banaras State (Administration) Order, 1949.

2. (*Incorporated in Section 3 of U. P. Act X of 1947.*)

3. (*Inserted as Sections 3-A, 3-B and 3-C in U. P. Act X of 1949.*)

4. (*Incorporated in Section 4 of U. P. Act X of 1949.*)

5. (*Incorporated in Section 6 of U. P. Act X of 1949.*)

6. (*Incorporated in Section 7 of U. P. Act X of 1949.*)

7. (*Inserted as Section 7-A of U. P. Act X of 1949.*)

8. (*Incorporated in Section 12 of U. P. Act X of 1949.*)

9. (*Incorporated in Section 16 of U. P. Act X of 1949.*)

10. Stay of suits, applications, proceedings.—Notwithstanding anything contained in any law for the time being in force, all suits, applications or proceedings of the category specified in the Schedule pending on the date of the commencement of this Act or which may hereafter be instituted, presented or commenced shall be and remain stayed for so long as this Act remains in force:

¹[Provided that the State Government may, at any time, by notification in the official Gazette declare that any such categories of suits, applications, proceedings or any particular class thereof and in such local area as the State Government may specify, stayed as aforesaid, shall cease to remain stayed :

Provided further that the State Government may likewise cancel the notification issued under the next preceding proviso and thereupon such suit, application or proceedings shall again remain stayed].

1. *Subs. by Section 4 of U. P. Act XXIII of 1951.*

Scope :—If the facts of the case disclose that it is one under Section 163, the mere fact that the decree has been awarded under Section 59/61 of the U. P. Tenancy Act will not prevent it from being stayed under this section.³² The words "suits, applications or proceedings" are wide enough to include appeals.³³

11. Exclusion from the period of limitation.—In computing the period of limitation for any suit, application or proceedings of the classes specified in the Schedule, instituted, presented or commenced after the expiry of this Act, which might have otherwise been instituted, presented or commenced during the period this Act remains in force, the period during which this Act remains in force shall be excluded.

12. Repeal of U. P. Ordinance Notification of 1950.—The Uttar Pradesh Agricultural Tenants (Acquisition of Privileges) (Amendment) and Miscellaneous Provisions Ordinance, 1950, is hereby repealed and the provisions of Sections 6 and 24 of the U. P. General Clauses Act, 1940, shall apply to it as if it had been an Act repealed by an United Provinces Act.

SCHEDULE

(*Section 10*)

I.—Under the United Provinces Land Revenue Act, 1901 (U. P. Act III of 1901)—

Suits, applications or proceedings relating to partition under Chapter VII.

II.—Under the United Provinces Encumbered Estates Act, 1934 (U. P. Act XXV of 1934)—

Proceedings under Chapter V except proceedings for the recovery of instalments ordered under Section 27 or Section 28 or proceedings under Sections 41 and 42.

III.—Under the United Provinces Tenancy Act, 1939 (U. P. Act XVII of 1939)—

Suits, applications or proceedings under Sections 63, 114, 117, 175, 18¹ (other than suits in which the plaintiff is a tenant), 181 (about applications and proceedings relating to the last two classes).

IV.—Suits, applications or proceedings under the following sections of the Banaras State Tenancy Act (Act No. III of 1949)—

97, 99, 154, 159 (except suits in which plaintiffs are tenants).

V.—Under the United Provinces Regulation of Agricultural Credit Act, 1940 (U. P. Act XIV of 1940)—

Proceedings under Section 24 except in so far as they relate to fixed rate tenant.

32. *Oudh Narain Rai v. Sasti Kewat.* 1951 R D 74.

33. *Ch. Bilkram Singh v. Sunnehra,* 1951 A W R 56 (H C).

**THE UTTAR PRADESH AGRICULTURAL TENANTS
(ACQUISITION OF PRIVILEGES) (AMENDMENT) AND
MISCELLANEOUS PROVISIONS ACT, 1951.¹**

(U. P. ACT No. XXIII OF 1951)

Authoritative English text² of the Uttar Pradesh Kashtikar (Visheshadnikar Uparjan) (Sanshodhan) aur Prakirna Nidesh Adhiniyam, 1951.

AN

Act to amend the Uttar Pradesh Agricultural Tenants (Acquisition of Privileges) (Amendment) and Miscellaneous Provisions Act, 1950, for certain purposes.

WHEREAS it is expedient to amend the Uttar Pradesh Agricultural Tenants (Acquisition of Privileges) (Amendment) and Miscellaneous Provisions Act, 1950;

It is hereby enacted as follows :

1. Short title, extent and commencement.—(1) This Act may be called the Uttar Pradesh Agricultural Tenants (Acquisition of Privileges) (Amendment) and Miscellaneous Provisions Act, 1950.

(2) It shall be deemed to have come into force from the ninth day of August, 1951 (hereinafter called the date of commencement of the Act) except Section 4 which shall be deemed to have come into force on the sixteenth day of March, 1950.

2. Definition.—In this Act unless there is anything repugnant in the subject or context, “occupier” shall have the meaning assigned to it in the U. P. Agricultural Tenants (Acquisition of Privileges) Act, 1949.

3. (*Incorporated in Section 12 of U. P. Act X of 1949.*)

4. (*Incorporated in Section 10 of U. P. Act VII of 1950.*)

5. Proceedings against an occupier under Section 12 (1) (c) of U. P. Act X of 1949 to be stayed. (1) Notwithstanding anything contained in the Principal Act all proceedings pending on the date of commencement of this Act or which are or may thereafter be commenced against an occupier on any ground mentioned in clause (c) of sub-section (1) of Section 12 of the said Act shall be and are hereby stayed.

(2) If in any proceeding under sub-section (1), the question is raised whether the person concerned is or is not an occupier, the Assistant Collector shall, unless the question has already been decided by a

1. For S. O R see Gaz. Extra., d. August 27, 1951.

Passed in Hindi by the Uttar Pradesh Legislative Assembly on Sept. 17, 1951, and by the Uttar Pradesh Legislative Council on Sept. 24, 1951.

Received the assent of the Governor on Oct. 6, 1951, under Article 200 of the Constitution of India and was published in *Gaz. Extra.*, d. Oct. 15, 1951.

2. Published in *Gaz. Extra.*, d. Oct. 15, 1951.

competent court, after such enquiry as he deems fit first decide this question.

6. Revival of the declaration.—(1) An occupier whose declaration under Section 6 of the Principal Act has been cancelled before the date of commencement of this Act under clause (c) of sub-section (1) of Section 12 of the Principal Act, may within four months of the said date apply to the Assistant Collector for revival of the declaration.

(2) On receipt of application under sub-section (1), the Assistant Collector shall give notice of the same to the person at whose instance the declaration was cancelled.

(3) If the Assistant Collector, is after hearing the applicant and the person at whose instance the declaration was cancelled, is satisfied that the applicant is an occupier and the cancellation was not ordered for any of the reasons mentioned in clauses (a) and (b) of sub-section (1) of Section 12 of the Principal Act and that the amount deposited by him has not been refunded under sub-section (2) of Section 12 of the said Act, he shall order that the declaration be revived with effect from the date from which it was originally granted or from some subsequent date if the Assistant Collector for reasons to be recorded in writing so considers necessary.

(4) If the Assistant Collector finds that the applicant is otherwise entitled to the revival of the declaration but the amount deposited has been refunded under sub-section (2) of Section 12, he shall inform the applicant that he may deposit the amount within the time to be specified by the Assistant Collector.

(5) Where the amount is deposited within the time allowed, the Assistant Collector shall order that the declaration be revived.

7. Restoration of possession.—(1) Where an occupier who has applied for revival of declaration under Section 6 was dispossessed of his holding consequent upon the cancellation of the declaration, he may along with his application apply for his reinstatement in such holding.

(2) If the Assistant Collector, after giving notice to the landlord and to the person, if any, in possession of the whole or part of the holding, and after making such enquiry as may be necessary, is satisfied that the applicant should be reinstated, he shall order accordingly.

(3) The order directing the applicant to be reinstated shall be executable as a decree for ejectment passed in a suit under Section 180 of the U. P. Tenancy Act, 1939.

8. Appeals.—An appeal against an order passed by the Assistant Collector under sub-section (2) of Section 5 or under sub-section (3) of Section 6 or under sub-section (2) of Section 7 shall lie to the Commissioner within 60 days of the order appealed against and the order passed in appeal by the Commissioner shall be final.

9. Repeal of U. P. Ordinance III of 1951.—The Uttar Pradesh Agricultural Tenants (Acquisition of Privileges) (Amendment) Ordinance, 1951 is hereby repealed and the provisions of Sections 6 and 24 of the U. P. General Clauses Act, 1904, shall apply to it as if it had been an enactment repealed by an U. P. Act.

THE ALIGARH MUSLIM UNIVERSITY ACT, 1920

(ACT NO. XL OF 1920)

CONTENTS

Sections

1. Short title and commencement.
2. Definitions.
3. Incorporation.
4. Dissolution of the Muhammadan Anglo-Oriental College, Aligarh, and the Muslim University Association, and transfer of all property to the University.
5. Powers of the University.
6. Recognition of degrees.
7. Reserve funds.
8. University open to all classes, castes and creeds.
9. [Repealed].
10. Residence of students.
11. Teaching in the University.
12. Power to establish and maintain High Schools and other institutions.
- 12-A. Power to recognize college and institutions.
13. The visitor.
14. [Repealed].
15. Chief Rector and Rectors.
16. Officers of the University.
17. The Chancellor.
18. The Pro-Chancellor.

Sections

19. The Vice-Chancellor.
20. [Repealed].
21. Other Officers.
22. Authorities of the University.
23. The Court.
24. The Executive Council.
25. The Academic Council.
26. Other authorities of the University.
27. Power to make statutes.
28. Statutes—how made.
29. Power to make Ordinances.
30. [Repealed].
31. Regulations.
32. [Repealed].
33. Examinations.
34. Annual Report.
35. Annual accounts.
36. Conditions of service of officers and teachers.
37. Pension or Provident Funds or Insurance Scheme.
38. Casual vacancies.
39. Proceedings of University authorities not invalidated by vacancies
40. [Repealed].
41. [Repealed].

FIRST STATUTES OF THE UNIVERSITY

[Received the assent of the Governor-General on the 14th September, 1920.]

An Act to establish and incorporate a teaching and residential Muslim University at Aligarh.

WHEREAS it is expedient to establish and incorporate a teaching and residential Muslim University at Aligarh and to dissolve the Societies registered under the Societies' Registration Act, 1860, which are respectively known as the Muhammadan Anglo Oriental College, Aligarh, and the Muslim University Association, and to transfer to and vest in the said University all properties and rights of the said Societies of the Muslim University Foundation Committee;

It is hereby enacted as follows :

Prefatory Note:—For S. O. R. see Gaz. of I, 1920, Pt. V, p. 147; for R. S. Com., see *ibid* 1920, Pt. V, p. 236; and for Proceedings in council, see *ibid* 1920, Pt. VI, pp. 1057, 1105 and 1178—1190,

1. **Short title and commencement.**—(1) This Act may be called the Aligarh Muslim University Act, 1920.

(2) It shall come into force on such date¹ as the [Central Government]² may, by notification in the [Official Gazette]³, appoint.

1. This Act was brought into force on the 1st Dec., 1920, *see* Not. No. 1458 d, Dec. 1, 1920, in *Gaz. of I*, 1920,

2. Pt. 1, p. 2213.
2. Subs. for [G.-G.-in-C.] by the A.O. 1937

2. Definitions.—In this Act, and in all Statutes made hereunder, unless there is anything repugnant in the subject or context,—

- (a) “Academic Council” means the Academic Council of the University ;
- (b) “Court” means the Court of the University.
- (c) “Executive Council” means the Executive Council of the University ;
- (d) “Hall” means a unit of residence for students of the University, provided [maintained or recognised]¹ by the University ;
- (e) * * * * ;
- (f) “Statutes”, “Ordinances” and “Regulations” mean, respectively, the Statutes, Ordinances and Regulations of the University for the time being in force ;
- (g) “teachers” mean Professors, Readers, Lecturers, Demonstrators and such other persons as may be appointed for imparting instruction in the University or a Hall ; and
- (h) “University” means the Aligarh Muslim University.

The University

3. Incorporation.—The First Chancellor, Pro-Chancellor and Vice-Chancellor who shall be the persons appointed in this behalf by a notification² of the [Central Government]³ in the [Official Gazette]⁴, and the persons specified in the Schedule as the first members of the Court and all persons, who may hereafter become, or be appointed as, such officers or members, so long as they continue to hold such office or membership, are hereby constituted a body corporate by the name of the Aligarh Muslim University, and shall have perpetual succession and a Common Seal and shall sue and be sued by that name.

4. Dissolution of the Muhammadan Anglo-Oriental College, Aligarh, and the Muslim University Association, and transfer of all property to the University.—From the commencement of this Act—

- (i) The Societies known as the Muhammadan Anglo-Oriental College, Aligarh, and the Muslim University Association shall be dissolved, and all property, movable and immovable, and all rights, powers and privileges of the said Societies and all property, movable and immovable, and all rights, powers and privileges of the Muslim University Foundation Committee shall be transferred to and vest in the University, and shall be applied to the objects and purposes for which the University is incorporated ;
 - (ii) all debts, liabilities and obligations of the said Societies and Committee shall be transferred to the University, and shall thereafter be discharged and satisfied by it ;
3. Subs. for [Gaz. of I.] by the A.O. 1937.
4. Subs. for [or maintained] by clause (a) of S. 2 of Act LXII of 1951.
5. Clause (e) of S. 2 of the original
- Act omit, by clause (b) of S. 2, *ibid.*
6. For not, appointing the first Vice-Chancellor of the University see Not. No. 1459, d, Dec. 1, 1920, in Gaz. of I., 1920, Pt. 1, p. 2213.

- (iii) all references in any enactment to either of the said Societies or to the said Committee shall be construed as references to the University;
- (iv) any will, deed or other document, whether made or executed before or after the commencement of this Act, which contains any bequest, gift or trust in favour either of the said Committee shall, on the commencement of this Act, be construed as if the University was therein named instead of such Society or Committee;
- (v) subject to any orders which the Court may make, the buildings which belonged to the Muhammadan Anglo-Oriental College, Aligarh, shall continue to be known and designated by the names and styles by which they were known and designated immediately before the commencement of this Act;
- (vi) subject to the provisions of this Act, every person employed immediately before the commencement of this Act in the Muhammadan Anglo-Oriental College, Aligarh, shall hold employment in the University by the same tenure and upon the same terms and conditions and with the same rights and privileges as to pension and gratuity as he would have held the same under the Muhammadan Anglo-Oriental College, Aligarh, if this Act had not been passed.

5. Powers of the University.—The University shall have the following powers, namely—

(1) to provide for instruction in such branches of learning as the University may think fit, and to make provision for research and for the advancement and dissemination of knowledge;

(2) to promote Oriental and Islamic studies and give instruction in Muslim theology and religion and to impart moral and physical training;

(3) to hold examinations and to grant and confer degrees and other academic distinctions to and on persons who—

(a) shall have pursued a course of study in the University, or
⁷[in an institution maintained under sub-section (2) of Section 12 or admitted to the privileges of the University under Section 12-A, or]

(b) are teachers in educational institutions, [or]⁸ under conditions laid down in the Statutes and Ordinances, and shall have passed the examinations of the University, under like conditions;

⁸[(c) being women, shall have pursued a course of private study.] ;

(4) to confer honorary degrees or other distinctions * * *⁹ in the manner laid down in the Statutes;

7. Ins. at the end of clause (a) by S. 2 of Act XVII of 1941.

8. The word [or] after the word "institutions" and the new cl. (c.) after

cl. (b), were Ins. by S. 3 (i) of Act LXII of 1951.

9. The words [on approved persons] omit. by S. 3 (ii) ibd.

(5) to grant such diplomas [and certificates]¹⁰ to and to provide such lectures and instructions for persons, not being members of the University, as the University may determine;

(6) to co-operate with other Universities and authorities in such manner and for such purposes as the University may determine;

(7) to institute Professorships, Readerships, Lecturerships, and []¹¹ other teaching posts required by the University, and to appoint persons to such Professorships, Readerships, Lecturerships [and other posts]¹²;

(8) to institute and award Fellowships (including Travelling Fellowships), Scholarships, [Studentships]¹³, Exhibitions and Prizes in accordance with the Statutes and the Ordinances;

(9) to institute and maintain Halls [and Hostels and to recognise places of residence for the]¹⁴ students of the University;

(10) to demand and receive such fees and other charges as may be prescribed by the Ordinances;

(11) to supervise and control the residence and [to regulate the]¹⁵ discipline of students of the University, and to make arrangements for promoting their health ***¹⁶;

(11-A) to make special arrangements in respect of the residence, discipline and teaching of women students;

(11-B) to create administrative, ministerial and other necessary posts and to make appointments thereto and;]¹⁷

(12) to do all such other Acts and things whether incidental to the powers aforesaid or not as may be requisite in order to further the objects of the University ***¹⁸.

6. Recognition of degrees.—The degrees, diplomas and other academic distinctions granted or conferred to or on persons by the University shall be recognised by [the Central and State Governments]¹⁹ as are the corresponding degrees, diplomas and other academic distinctions granted by any other University incorporated under any enactment.

7. Reserve funds.—The University shall invest and keep invested in securities in which trust funds may be invested in accordance with the law for the time being in force relating to trusts in [India]²⁰ a sum

10. *Ins.* by S. 3 (iii) *ibid.*
11. The word [any] *omit* by S. 3 (iv)
(a) *ibid.*
12. *Subs.* for the words [and posts] by S. 3 (iv) (b) *ibid.*
13. *Ins.* by S. 3 (v) of Act LXII of 1951.
14. *Subs.* for [for the residence of] by S. 3 (vi) *ibid.*
15. *Ins.* by S. 3 (vii) *ibid.*
16. The word [and] *omit*. by S. 3 (vii) *ibid.*
17. Cls. II-A and II-B *add.* by S. 3 (viii) *ibid.*

18. All the words after the words "the University" *omit*. by S. 3 (ix) *ibid.*
19. The words [the Central and Provincial Governments] were *subs.* by the A.O. 1948 for [any Govt. in British India] which had been *subs.* by the A.O. 1937 for [the Govt.]. The word [State] was later *subs.* by the A.O. 1950, for [Prov.]
20. *Subs.* by S. 4 of Act LXII of 1951 for [Part A States and Part C States] which had been *subs.* by the A.O. 1950 for [the Provinces] which had been *subs.* by the A.O. 1948 for [British India].

of thirty lakhs of rupees as a permanent endowment to meet the recurring charges of the University other than charges in respect of Fellowships, Scholarships, Prizes and rewards :

Provided that—

(1) any Government securities as defined in the Indian Securities Act, 1920, which may be held by the University shall, for the purposes of this section, be reckoned at their face value ; and

(2) the aforesaid sum of thirty lakhs shall be reduced by such sums as, at the commencement of this Act, the [Central Government]²¹ shall, by order in writing, declare to be the total capitalised value, for the purpose of this section—

(a) of all permanent recurring grants of money which have been made either to the Muhammadan Anglo-Oriental College, Aligarh, the Muslim University Association or the Muslim University Foundation Committee by any Ruler of a State in India ; and

(b) of the total income accruing from immovable property (not being land or buildings, in the occupation and use of the said College) which by the operation of this Act has been transferred to the University.

8. University open to all classes, castes and creeds. —²² [The University shall be open to persons of either sex and of whatever race, creed, caste, or class, and it shall not be lawful for the University to adopt or impose on any person, any test whatsoever of religious belief or profession in order to entitle him to be admitted therein, as a teacher or student, or to hold any office therein, or to graduate there at or to enjoy or exercise any privilege thereof, except in respect of any particular benefaction accepted by the University, where such test is made a condition thereof by any testamentary or other instrument creating such benefaction:

Provided that nothing in this section shall be deemed to prevent religious instruction being given in the manner prescribed by the Ordinances to those who have consented to receive it.]

9. * * * ²³

10. Residence of students.—Every student of the University shall reside either in a Hall or under such conditions as may be prescribed by the Ordinances.

11. Teaching in the University.—[All recognised teaching in the University for the purpose of University degrees, diplomas and certificates shall be conducted in the name of the University and in accordance with the Ordinances and shall include lectures, seminars, tutorial instructions and practical work in the laboratory or in the field.]²⁴

12. Power to establish and maintain High Schools and other institutions.—[(1) The University shall, subject to the Statutes, have

21. Subs. for [G.-G.-in-C.] by the A. O. 1937.

22. Subs. by S. 5 of Act LXII of 1911.

23. S. 9 omit. by S. 6 *ibid.*

24. Subs. by S. 7 *ibid.*

power to establish and maintain High Schools within a radius of fifteen miles from the University Mosque.

(2) The University may also, with the sanction of the Visitor and subject to the Statutes and the Ordinances, establish and maintain within the aforementioned limits any other institution whose objects fall within the powers of the University as described in Section 5]²⁵.

12-A. Power to recognize colleges and institutions.—[With the approval of the Academic Council and the sanction of the Visitor, and subject to the Statutes and the Ordinances, the University may admit colleges and institutions within fifteen miles of the University Mosque of such privileges of the University as it thinks fit]²⁶

The Visitor

13. The visitor · (1) [The President]²⁷ shall be the [Visitor]²⁸ of the University.

(2) The [Visitor]²⁸ shall have the right to cause an inspection to be made by such person or persons as he may direct, of the University, its buildings, laboratories, and equipment, and of any institution maintained by the University, and also of the examinations, teaching and other work conducted or done by the University, and to cause an inquiry to be made in the manner in respect of any matter connected with the University * * *²⁹.

[(2-A) The Visitor shall in every case give notice to the University of his intention to cause an inspection or inquiry to be made, and the University shall be entitled to appoint a representative who shall have the right to be present and be heard at such inspection or inquiry ; and]³⁰

(3) The [Visitor]²⁸ may address the Vice-Chancellor with reference to the result of such inspection and inquiry, and the Vice-Chancellor shall communicate to the [Executive Council] the views of the [Visitor]²⁸ with such advice as the [Visitor]²⁸ may be pleased to offer upon the action to be taken thereon.

(4) The [Executive Council]²⁸ shall communicate through the Vice-Chancellor to the [Visitor]²⁸ such action, if any, as it is proposed to take or has been taken upon the result of such inspection or inquiry.

(5) Where the [Executive Council]³¹ does not, within reasonable time, take action to the satisfaction of the [Visitor]³¹, the [Visitor]³¹ may, after considering any explanation furnished or representation made by the [Executive Council]³¹ issue such directions as he may think fit, and the [Executive Council]³¹ shall comply with such directions.

(6) [Without prejudice to the foregoing provisions of this section,

- 25. *Subs.* by S. 8 of Act LXII of 1951 which had been *subs.* for the original S. by S. 2 of Act XVIII of 1931.
- 26. *Subs.* by S. 9 of Act LXII of 1951 which had been *subs.* for the original Sec. 12-A by S. 2 of Act XVIII of 1931.
- 7. *Subs.* for [Governor-General] by

- the A.O. 1950.
- 28. *Subs.* by S. 10 of Act LXII of 1951 for [Lord Rector] and [Court] wherever they occur in S. 13, 29. All the words After the words "the University" omit. by cl. (c) of S. 10 of Act LXII of 1951.
- 30. *Add.* by S. 10 (c) *ibid.*
- 31. See footnote no. 28.

the visitor may, by order in writing, annul any proceeding of the University which is not in conformity with this Act, the Statutes or the Ordinances :

Provided that before making any such order, he shall call upon the University to show cause why such an order should not be made, and, if any cause is shown within a reasonable time, shall consider the same]³².

14. * * *³³

15. Chief Rector and Rectors.—[(1) The Governor of the State of Uttar Pradesh shall be the Chief Rector of the University.

(2) Such persons as may be appointed in this behalf in accordance with the Statutes shall be the Rectors of the University.]³⁴

Officers of the University

16. Officers of the University.—The following shall be officers of the University—

- I. The Chancellor,
 - II. The Pro-Chancellor,
 - III. The Vice-Chancellor, * * *³⁵;
 - ³⁶[(3-A) The Pro-Vice-Chancellor, if any ;
 - (3-B) The Treasurer ;
 - (3-C) The Registrar ;
 - (3-D) The Deans of the Faculties ; and]
- * * *³⁷.

³⁸[IV.] Such other officers as may be declared by the Statutes to be officers of the University.

17. The Chancellor.—(1) The successors to the first Chancellor shall be elected by the Court.

(2) The Chancellor shall hold office for three years.

(3) The Chancellor shall, by virtue of his office, be the head of the University.

(4) The Chancellor shall, if present, preside at Convocations of the University held for conferring degrees and at meetings of the Court.

(5) Every proposal for the conferment of an honorary degree shall be subject to the confirmation of the Chancellor.

18. The Pro-Chancellor.—(1) The successors to the first Pro-Chancellor shall be elected by the Court.

32. *Ins. by Section 10 (d) of Act LXII of 1951.* The subs. *ins. in the present form by the A. O. 1937 was omit. by the A. O. 1948.*
33. *Omit. by Section 11 of Act LXII of 1951.*
34. *Subs. by Section 12 ibid.*
35. The word [and] *omit. by Section 13 of Act LXII of 1951* which had

- been add. by Section 2 of Act XI of 1945.
36. *Ins. by Section 13 of Act LXII of 1951.*
37. Cl. (iv) which read [The Pro-Vice-Chancellor, and] *omit. by Section 2 of Act XI of 1945.*
38. Original Cl. (5) re-numbered as (4) by Section 2 *ibid.*

(2) The Pro-Vice-Chancellor shall hold office for three years.

(3) Casual vacancies in the office of the Pro-Chancellor shall be filled by the Chancellor on the recommendation of the Executive Council. The persons so appointed shall hold office till the next annual meeting of the Court.

(4) The Pro-Vice-Chancellor shall, in the absence of the Chancellor, exercise the functions of the Chancellor.

19. The Vice-Chancellor.—(1) [The successors to the Vice-Chancellor holding office at the commencement of the Aligarh Muslim University (Amendment) Act, 1951, shall be appointed in the manner provided in the Statutes.]³⁹

(2) The Vice-Chancellor shall exercise such powers and perform such functions as may be prescribed by the Statutes.

20. * * *⁴⁰.

21. Other Officers.—The powers of officers of the University other than the Chancellor, [and the Pro-Chancellor]⁴¹ []⁴² shall be prescribed by the Statutes [].⁴³

Authorities of the University

22. Authorities of the University.—The following shall be the authorities of the University—

I. The Court,

II. The Executive Council,

III. The Academic Council, []⁴⁴

[3-A) The Finance Committee ;

(3-B) The Faculties ; and]⁴⁵.

IV. Such other authorities as may be declared by the Statutes to be authorities of the University.

23. The Court.—(1) The Court shall consist of the Chancellor, the Pro-Chancellor, [the Vice-Chancellor and the Pro Vice-Chancellor (if any)]⁴⁶ for the time being, and such other persons as may be specified in the Statutes :

* * *⁴⁷.

(2) The Court shall be the supreme governing body of the University, and shall exercise all the powers of the University, not otherwise provided for by this Act, the Statutes, the Ordinances and the Regulations. It shall have power to review the acts of the Executive and the

39. Subs. by Section 14 of Act LXII of 1951.

40. Section 20 omit. by Section 3 of Act XI of 1945.

41. Subs. for the words [the Pro-Chancellor and the Vice-Chancellor] by Section 15 (a) of Act LXII of 1951.

42. The words [and the Pro-Vice-Chancellor] omit. by Section 4 of Act XI of 1945.

43. The words [and the Ordinances] omit. by Section 15 (b) of Act LXII of 1951.

44. The word [and] omit. by Section 16 *ibid.*

45. Add. items 3-A and 3-B by Section 16 *ibid.*

46. Subs. for the words [and the Vice-Chancellor] by S. 17 (a) (i) of Act LXII of 1951.

47. *Proviso* omit. by S. 17 (a) (ii) *ibid.*

Academic Councils (save where such Councils have acted in accordance with powers conferred on them under this Act, the Statutes or the Ordinances. * * *⁴⁸

(3) Subject to the provisions of this Act, the Court shall exercise the following powers and perform the following duties, namely—

- (a) of making Statutes and of amending or repealing the same ;
- (b) of considering Ordinances ;
- (c) of considering and passing resolutions on the annual report, the annual accounts and the financial estimates ;
- (d) of electing such persons to serve on authorities of the University and of appointing such officers as may be prescribed by this Act, or the Statutes ; and
- (e) of exercising such other powers and performing such other duties as may be conferred or imposed upon it by this Act or the Statutes.

24. The Executive Council * * *⁴⁹.—The Executive Council shall be the executive body of the University. Its constitution and the term of office of its members and its powers and duties shall be prescribed by the Statutes.

25. The Academic Council.—(1) The Academic Council shall be the academic body of the University and shall, subject to the provisions of this Act, the Statutes and the Ordinances, have the control and general regulation of, and be responsible for the maintenance of standards of instruction, and for the education, examination, discipline and health of students, and for the conferment of degrees (other than honorary).

(2) The constitution of the Academic Council and the term of office of its members and its powers and duties shall be prescribed by the Statutes.

26. Other authorities of the University.—The constitution, powers and duties [of the Finance Committee and the faculties, and]⁵⁰ of other authorities as may be declared by the Statutes to be authorities of the University, shall be prescribed by the Statutes.

Statutes, Ordinances and Regulations

27. Power to make Statutes.—[Subject to the provisions of this Act, the Statutes may provide for all or any of the following matters, namely :—

- (a) the constitution, powers and duties of the authorities of the University ;
- (b) the election and continuance in office of the members of the said authorities including the continuance in office of the first members, and the filling of vacancies of members, and all other matters relative to those authorities for which it may be necessary or desirable to provide ;
- (c) the appointment, powers and duties of the officers of the University ;

48. The words [and direct that necessary action be taken by the Executive or the Academic Council, as the case may be, on any recommendations of the Lord Rector]

49. omit. by cl. (b) of S. 17 *ibid.*
50. The figure and brackets [(1)] rep. by S. 3 and Sch. II of Act VII of 1924.
50. Ins. by S. 18 of Act LXII [of 1951.]

- (d) the constitution of a pension or provident fund and the establishment of an insurance scheme for the benefit of the officers, teachers and other employees of the University;
- (e) the conferment of honorary degrees;
- (f) the institution of fellowships, scholarships, studentships, exhibitions, medals and prizes;
- (g) the withdrawal of degrees, diplomas, certificates and other academic distinctions;
- (h) the establishment and abolition of Faculties, Departments, Halls, Colleges and other institutions;
- (i) the conditions under which colleges and institutions may be admitted to privileges of the University and for the withdrawal of such privileges;
- (j) the establishment of High Schools and other institutions in accordance with the provisions of Section 12; and
- (k) all other matters which by this Act are to be or may be provided by the Statutes.]⁵¹

28. Statutes--how made.—(1) The first Statutes are those set out in the Schedule.

(2) ⁵² [The Court may, from time to time, make new or additional Statutes or may amend or repeal the Statutes in the manner hereinafter in this section provided.

(3) The Executive Council may propose to the Court the draft of any Statute to be passed by the Court, and such draft shall be considered by the Court at its next meeting.

(4) The Court may approve any such draft as is referred to in subsection (3) and pass the Statute or reject it or return it to the Executive Council for reconsideration, either in whole or in part, together with any amendments which the Court may suggest:

Provided that the Executive Council shall not propose the draft of any Statute or of any amendment of a Statute affecting the status, powers or constitution of any existing authority of the University until such authority has been given an opportunity of expressing an opinion upon the proposal, and any opinion so expressed shall be in writing and shall be considered by the Court.

(5) Any member of the Court may propose to the Court the draft of any Statute and the Court may reject the proposal or refer such draft for consideration to the Executive Council, which may either reject the proposal or submit the draft to the Court in such form as the Executive Council may approve, and the provisions of this section shall apply in the case of draft so submitted as they apply in the case of a draft proposed to the Court by the Executive Council.

(6) Every new Statute or addition to the Statutes or any amendment or repeal of a Statute shall require the previous approval of the Visitor who may sanction, disallow, or remit it for further consideration.]

29. Power to make Ordinances.—⁵³ [(1) Subject to the provisions of this Act and the Statutes, the Ordinances may provide for all

⁵¹. Subs. by S. 19 of Act LXII of 1951. | ⁵³. Subs. for Ss. 29 & 30 by S. 21 *ibid.*

⁵². Subs. by S. 20 of Act LXII of 1951.

or any of the following matters, namely—

- (a) the admission of students to the University and their enrolment as such ;
- (b) the courses of study to be laid down for all degrees, diplomas and certificates of the University.
- (c) the award of degrees, diplomas, certificates and other academic distinctions, the qualifications for the same and the means to be taken relating to the granting and obtaining of the same ;
- (d) the fees to be charged for courses of study in the University and for admission to the examinations, degrees and diplomas of the University ;
- (e) the conditions of the award of fellowships, scholarships, studentships, exhibitions, medals and prizes ;
- (f) the conduct of examinations, including the terms of office and manner of appointment and the duties of examining bodies, examiners and moderators ;
- (g) the maintenance of discipline among the students of the University ;
- (h) the conditions of residence of the students of the University ;
- (i) the special arrangements, if any, which may be made for the residence, discipline and teaching of women students and the prescribing for them of special courses of studies ;
- (j) the giving of religious instruction ;
- (k) the emoluments and the terms and conditions of service of teachers of the University ;
- (l) the maintenance of High Schools and other institutions in accordance with the provisions of Section 12 ;
- (m) the supervision and inspection of colleges and other institutions admitted to the privileges of the University under Section 12-A ; and
- (n) all other matters which by this Act or the Statutes are to be or may be provided for the Ordinances.

(2) The Ordinances in force immediately before the commencement of the Aligarh Muslim University (Amendment) Act, 1951, may be amended, repealed or added to at any time by the Executive Council provided that—

- (i) no Ordinance shall be made affecting the conditions of residence or discipline of students except after consultation with the Academic Council ;
- (ii) no Ordinance shall be made—
 - (a) affecting the admission or enrolment of students or prescribing examinations to be recognised as equivalent to the University examinations, or
 - (b) affecting the conditions, mode of appointment or duties of examiners or the conduct or standard of examinations of any course of study, unless a draft of such Ordinance has been proposed by the Academic Council.

(3) The Executive Council shall not have power to amend any draft proposed by the Academic Council under the provisions of sub-section (2) but may reject the proposal or return the draft to the Academic Council for reconsideration, either in whole or in part, together with any amendments which the Executive Council may suggest.

(4) Where the Executive Council has rejected the draft of an Ordinance proposed by the Academic Council, the Academic Council may appeal to the Central Government and the Central Government may, by order, direct that the proposed Ordinance shall be laid before the next meeting of the Court for its approval and that pending such approval it shall have effect from such date as may be specified in the order :

Provided that if the Ordinance is not approved by the Court at such meeting : it shall cease to have effect.

(5) All Ordinances made by the Executive Council shall be submitted as soon as may be, to the Visitor and the Court, and shall be considered by the Court at its next meeting and the Court shall have power, by a resolution passed by a majority of not less than two-thirds of the members voting, to cancel any Ordinance made by the Executive Council, and such Ordinance shall, from the date of such resolution cease to have effect.

(6) The Visitor may, by order, direct that the operation of any Ordinance shall be suspended until he has had an opportunity of exercising his powers of disallowance, and any order of suspension under this sub-section shall cease to have effect on the expiration of one month from the date of such order or on the expiration of fifteen days from the date of consideration of the Ordinance by the Court, whichever period expires later.

(7) The Visitor may, at any time after an Ordinance has been considered by the Court, signify to the Executive Council his disallowance of such Ordinance, and from the date of receipt by the Executive Council of intimation of such disallowance, such Ordinance shall cease to have effect.]

30. ***

31. Regulations.—(1) The authorities of the University may make Regulations consistent with this Act, the Statutes and the Ordinances—

- (a) laying down the procedure to be observed at their meetings and the number of members required to form a quorum ;
- (b) providing for all matters which by this Act, the Statutes or the Ordinances, are to be prescribed by Regulations ; and
- (c) providing for all other matters solely concerning such authorities or committees appointed by them not provided for by this Act, the Statutes and the Ordinances.

(2) Every authority of the University shall make Regulations providing for the giving of notice to the members of such authority of the dates of meetings and of the business to be considered at meetings and for the keeping of a record of the proceedings of meetings.

[(3) The Executive Council may direct the amendment, in such

54. *see entry under S. 29 of this Act.*

manner as it may specify, of any Regulation made under this section or the annulment of any such Regulation :

Provided that any authority of the University which is dissatisfied with any such direction may appeal to the Court, whose decision in the matter shall be final.]⁵⁵

32. *⁵⁶**

33. Examinations.—(1) All arrangements for the conduct of examinations shall be made, and all examiners shall be appointed by the [Executive Council on the recommendation of the Academic Council].⁵⁷

(2) ***⁵⁸.

(3) The Academic Council shall appoint examination committees, consisting of members of its own body or of other persons or of both, as it thinks fit, to moderate examination questions, [and to prepare and publish]⁵⁹ the results of the examinations, ***⁶⁰.

Annual Report and Accounts

34. Annual Report.—The annual report of the University shall be prepared under the direction of the Executive Council, and shall be submitted to the Court on or before such date as may be prescribed by the Statutes, and shall be considered by the Court at its annual meeting. The Court may pass resolutions thereon and communicate the same to the Executive Council which shall take such action thereon as it thinks fit.

35. Annual accounts.—(1) The annual accounts and balance-sheet of the University shall be prepared under the direction of the Executive Council, and shall once at least every year and at intervals of not more than fifteen months be audited by [the Comptroller and Auditor-General of India].⁶¹

(2) The annual accounts when audited shall be published in the [Official Gazette]⁶², and a copy of the accounts, together with the [report of the Comptroller and Auditor-General shall be submitted to the visitor].⁶³

(3) The annual accounts and the financial estimates shall be considered by the Court at its annual meeting, and the Court may pass resolutions thereon and communicate the same to the Executive Council which shall take such action thereon as it thinks fit.

Supplementary Provisions

36. Conditions of service of officers and teachers—() Every salaried officer and teacher of the University shall be appointed on a written contract, which shall be lodged with the University and a copy of which shall be furnished to the officer or teacher concerned.

55. Add. by S. 22 of Act LXII of 1951.

56. Omit. by S. 23 *ibid.*

57. Subs. for [the Academic Council in such manner as may be prescribed by the Ordinances] by S. 24 (a) *ibid.*

58. Omit. by S. 24 (u) *ibid.*

59. Subs. for the words [to prepare] by S. 24 (c) *ibid.*

60. The words [and to report such results to the Executive Council for publication] Omit. by S. 24 *ibid.*

61. Subs. for the words [auditors appointed by the Visiting Board] by Section 25 (a) of Act LXII of 1951.

62. Subs. for [Gaz. of I. and in the Local Official Gazette] by the A.O., 1937.

63. Subs. for the words [auditor's report shall be submitted through the Visiting Board to the Lord Rector] by Section 25 (b) of Act LXII of 1951.

(2) Any dispute arising out of a contract between the University and any of its officers shall, at the request of the officer or teacher concerned, be referred to a tribunal of arbitration consisting of one member appointed by the Executive Council, one member nominated by the officer or teacher concerned and an umpire appointed by the [Visitor]⁶⁴. The decision of the tribunal shall be final, and no suit shall lie in any Civil Court in respect of the matters decided by the tribunal. Every such request shall be deemed to be a submission to arbitration upon the terms of this section within the meaning of the Indian Arbitration Act, 1899⁶⁵, and all the provisions of that Act, with the exception of Section 2 thereof, shall apply accordingly.

37. Pension or Provident Funds or Insurance Scheme.—(1) The University shall constitute for the benefit of its officers, teachers and servants such [pension or provident fund or provide such insurance scheme]⁶⁶ as it may deem fit in such manner and subject to such conditions as may be prescribed by the Statutes.

(2) Where such provident or pension fund has been so constituted, the [Central Government]⁶⁷ may declare that the provisions of the Provident Funds Act, [1-25]⁶⁸, shall apply to such fund, as if it were a Government provident fund.

38. Casual vacancies...-* * *

(2) Subject to the provisions of sub-section (3) of Section 18; []⁷⁰ casual vacancies in [any office or in any authority]⁷¹ shall be filled up by the authority which has power to appoint to the office or authority: provided that, when the Court is the appointing authority, the casual vacancy shall be filled by the Executive Council, and the person so appointed shall hold office till the next meeting of the Court.

39. Proceedings of University authorities not invalidated by vacancies.—No act or proceeding of any authority of the University shall be invalidated merely by reason of the existence of a vacancy or vacancies among its members.

40. * * *

41. * * *

THE SCHEDULE

FIRST STATUTES OF THE UNIVERSITY

1. **Rectors.** The visitor may, on his own motion, or on the recommendation of the Court, appoint such persons as he may think fit to be Rectors of the University.

2. **Vice-Chancellor.**—The Vice-Chancellor shall be appointed by the Visitor from among persons recommended by the Executive Council:

- | | |
|---|--|
| 64. <i>Subs.</i> for the words [Visiting Board] by Section 26 <i>ibid.</i> | 69. Sub-section (1) omit. by Section 28 (a) <i>ibid.</i> |
| 65. See now the Arbitration Act, 1940 (X of 1940.) | 70. The word [other] omit. by Section 28 (b) <i>ibid.</i> |
| 66. <i>Subs.</i> for the words [provident and pension funds] by Section 27 (a) of Act LXII of 1951. | 71. <i>Subs.</i> for the words [any office of any authority] by <i>ibid.</i> |
| 67. <i>Subs.</i> for [G.-G.-in-C.] by the A.O. 1937. | 72. Section 40 omit. by Section 29 <i>ibid.</i> |
| 68. <i>Subs.</i> for the figure [1897] by Section 27 (b) of Act LXII of 1951. | 73. Section 41 omit. by Act XI of 1945 which had been ins. by Section 2 of Act VI of 1935. |

Provided that if the Visitor does not approve of any of the persons so recommended he may call for fresh recommendations from Executive Council.

(2) The Vice-Chancellor shall be a whole-time salaried officer of the University.

(3) The Vice-Chancellor shall hold office for a term of six years and shall not be eligible for re-appointment :

Provided that, notwithstanding the expiry of the said period of six years, he shall continue in office until his successor is appointed and enters upon his office :

Provided further that the Visitor may direct that a Vice-Chancellor whose term of office has expired, shall continue in office for such period, not exceeding one year, as may be specified in the direction.

(4) The emoluments and the other terms and conditions of service of the Vice-Chancellor shall be prescribed by the Ordinances.

(5) In the case of a casual vacancy in the office of the Vice-Chancellor, the Pro-Vice-Chancellor, if any, shall, until the appointment of a new Vice-Chancellor, perform the functions of the Vice-Chancellor :

Provided that, if there is no Pro-Vice-Chancellor, the Registrar shall carry on the current duties of the office of the Vice-Chancellor, and take action under item (g) of Statute 6.

3. Power of the Vice-Chancellor.—(1) The Vice-Chancellor shall be the principal executive and academic officer of the University and shall take rank in the University next to the Pro-Chancellor. He shall be the *ex-officio* Chairman of the Executive Council, the Academic Council and the Finance Committee, and shall, in the absence of the Chancellor and the Pro-Chancellor, preside at the Convocation to confer degrees. In the absence of the Chancellor and Pro-Chancellor, he shall also preside at the meetings of the Court. He shall be entitled to be present at and to address any meeting of any authority or other body of the University, but shall not be entitled to vote thereat unless he is a member of such authority or body.

(2) It shall be the duty of the Vice-Chancellor to see that the Act, the Statutes, the Ordinances and the Regulations are duly observed, and he shall have all powers necessary for that purpose.

(3) He shall have the power of convening meetings of the Court, the Executive Council and the Academic Council and shall perform all such acts as may be necessary to carry out or further the provisions of the Act, the Statutes and the Ordinances.

(4) If, in the opinion of the Vice-Chancellor, any emergency has arisen which requires that immediate action should be taken, the Vice-Chancellor shall take such action as he deems necessary and shall report the same for confirmation at the next meeting to the authority which, in the ordinary course, would have dealt with the matter :

Provided that if the action taken by the Vice-Chancellor is not approved by the authority concerned he may refer the matter to the Visitor whose decision shall be final :

Provided further that where any such action taken by the Vice-Chancellor affects any person in the service of the University such person shall be entitled to prefer, within thirty days from the date on which he receives notice of such action, an appeal to the Executive Council.

(5) The Vice-Chancellor shall exercise general control over the affairs of the University and shall give effect to the decisions of the authorities of the University.

4. Pro-Vice-Chancellor.—(1) The Pro-Vice-Chancellor, if the Executive Council decides that there should be one, shall be appointed by the Executive Council on the recommendation of the Vice-Chancellor and on such terms as may be laid down in the Ordinances:

Provided that where the recommendation of the Vice-Chancellor is not accepted by the Executive Council, the matter shall be referred to the Visitor who may either appoint the person recommended by the Vice-Chancellor or ask the Vice-Chancellor to recommend another name to the Executive Council.

(2) The term of office of the Pro-Vice-Chancellor shall ordinarily be co-terminous with the term of office of the Vice-Chancellor :

Provided that, notwithstanding the expiry of the term of his office, the Pro Vice-Chancellor shall continue in office until his successor is appointed and enters upon his office.

(3) On the expiry of his term of office, the Pro-Vice-Chancellor shall be eligible for re-appointment

(4) The Pro-Vice-Chancellor shall assist the Vice-Chancellor in all matters, administrative and academic, including the discipline of the students and in the absence of the Vice-Chancellor, the Pro-Vice-Chancellor shall have and exercise all the functions and powers of the Vice-Chancellor.

4-A. Other Officers.—The following are hereby declared to be officers of the University, namely :—

(1) Librarian.

(2) Provosts.

(3) Proctor.

5. Treasurer.—(1) The Treasurer shall be elected by the Court from among a panel of three persons nominated by the Executive Council, and the election shall be subject to the approval of the Visitor. He shall hold office for a term of five years.

(2) He shall be an *ex-officio* member of the Court and the Executive Council.

(3) A casual vacancy in the office of the Treasurer shall be filled by the Executive Council. The person appointed to fill such vacancy shall hold office until the election of his successor at the next annual meeting of the Court.

(4) The Treasurer shall exercise general supervision over the funds of the University and shall advise it as regards its financial policy.

(5) The Treasurer shall :—

(a) subject to the control of the Executive Council, manage the property and investments of the University and be responsible for the preparation of the annual accounts and the financial estimates and for their presentation to the Executive Council and the Court ;

(b) subject to the powers of the Executive Council, be responsible for seeing that all monies are expended on the purpose for which they are granted or allotted ;

- (c) sign all contracts made on behalf of the University ;
- (d) convene meetings of the Finance Committee ; and
- (e) exercise such other powers as may be prescribed by the Ordinances.

(6) The receipt of the Treasurer of the person or persons duly authorised in this behalf by the Executive Council for any money payable to the University shall be sufficient discharge for the same.

6. Registrar.—(1) The Registrar shall be appointed by the Executive Council and shall be a whole-time officer of the University. The terms and conditions of the service of the Registrar shall be such as may be prescribed by the Ordinances.

(2) The Registrar shall be *ex-officio* Secretary of the Court, the Executive Council, the Academic Council, the Finance Committee and the Faculties, but shall not be deemed to be a member of any of these authorities.

(3) It shall be the duty of the Registrar —

- (a) to be the custodian of the records, Common Seal and such other property of the University as the Executive Council shall commit to his charge ;
- (b) to issue all notices convening meetings of the Court, the Executive Council, the Academic Council, the Finance Committee, the Faculties and any committees the Boards of Examiners and of any committees appointed by the authorities of the University ;
- (c) to keep the minutes of all meetings of the Court, the Executive Council, the Academic Council, the Finance Committee, the Faculties and any committees appointed by the authorities of the University ;
- (d) to conduct the official correspondence of the Court, the Executive Council and the Academic Council ;
- (e) to arrange for and superintend the examinations of the University ;
- (f) to supply to the Visitor copies of the agenda of the meetings of the authorities of the University as soon as they are issued and the minutes of the authorities ordinarily within a month of the holding of the meetings ;
- (g) in an emergency, when neither the Vice-Chancellor nor the Pro-Vice-Chancellor is able to act, to call a meeting of the Executive Council forthwith and to take its directions for the carrying on of the work of the University ; and
- (h) to perform such other duties as may, from time to time, be assigned to him by the Executive Council.

7. Deans, Provosts and Proctor.—(1) The Deans of the Faculties shall be appointed in such manner and shall exercise such powers and perform such duties as may be prescribed in the Statutes.

(2) The Librarian shall be appointed by the Executive Council and shall be a whole-time officer of the University.

(3) The Provosts shall be appointed by the Executive Council on the recommendation of the Vice-Chancellor and shall exercise such

powers and perform such duties as may be assigned to them by the Vice-Chancellor. A Provost shall hold office for a term of two years.

(4) The Proctor shall be appointed by the Executive Council on the recommendation of the Vice Chancellor and shall exercise such powers and perform such duties as may be assigned to him by the Vice-Chancellor. The Proctor shall hold office for a term of two years.

8. Court.—(1) The Court shall consist of the following persons, namely :—

Ex-Officio MEMBERS

- (i) Chancellor ;
- (ii) Pro-Chancellor ;
- (iii) Vice-Chancellor ;
- (iv) Pro-Vice-Chancellor, if any ;
- (v) Treasurer ;
- (vi) All Ex-Vice-Chancellors ;
- (vi-a) Librarian ;
- (vii) Provosts ; and
- (viii) Proctor.

REPRESENTATIVES OF DEPARTMENTS AND COLLEGES

- (ix) Heads of Departments of Studies ;
- (x) Principals of Colleges ; and
- (xi) Professors who are not Heads of Departments of Studies.

REPRESENTATIVES OF UNIVERSITY TEACHERS OTHER THAN PROFESSORS

- (xii) (a) Two Readers by rotation according to seniority, who shall be members for a term of three years.
- (b) Three Lecturers, by rotation according to seniority, who shall be members for a term of three years.

REPRESENTATIVES OF EX-STUDENTS

- (xiii) Fifteen representatives to be elected by the Alumni (Old Boys) Association.

DONORS

- (xiv) (a) Every person making to the University a donation of one lakh of rupees or upwards or transferring property of the like value ; and
- (b) representatives of persons making to the University a donation of Rs. 1,000 or upwards (excluding persons who have donated Rs. 1,00,000 or more), elected from among themselves. There shall be one representative for every fifty such donors, subject to a maximum of fifteen representatives.

EXPLANATION 1

Every donor who makes to the University an annual grant of money, the payment of which is secured by mortgage of immovable property or in such other manner as the Executive Council may approve, shall, subject to the provisions of Explanation 3, have the same rights as to membership of, and representation on, the Court as if he

had been a donor of such sum as represents the capital value of such annual grant ascertained at a rate of interest of $3\frac{1}{2}$ per cent :

Provided that in the case of a body corporate, the Executive Council may dispense with any such security.

EXPLANATION 2

The amounts of donations specified in sub-items (a) and (b) may, for the purpose of qualifying the donors within those provisions, be made up partly of money or of capitalised grants, as provided in Explanation 1 or of property or partly of any two or more of these.

EXPLANATION 3

When an annual grant is not fully paid up or falls in arrears, the donor shall not be entitled to exercise any of the privileges conferred on him by any of the foregoing provisions of this Statute, unless and until the said arrears are paid up.

EXPLANATION 4

Where the donors of a sum are more persons than one, who constitute a joint Hindu family or a partnership firm or a company or corporation, the Registrar shall call upon such donors to elect, within a time to be fixed by him, one of their member to represent and act for them in voting at the election. If such donors fail to elect and notify the name and address of the person so elected by them within the time specified in the notice, or within such further period of time as may be allowed by the Registrar or are unable to agree as to the person who should represent them for the purpose of voting at the election, the Registrar shall lay the matter for orders before the Vice-Chancellor, who may nominate any one of their member to represent them at the election for the purpose of voting. The orders of the Vice-Chancellor in this regard shall be final. The name of the person so elected or nominated to represent such donors shall be entered in the column of remarks against the names of such donors, and for purposes of serving all notices of elections, of making nominations of persons to be elected and for voting at the election the person so noted as the representative of such donors shall be deemed to be the person entitled to act as one of the electors.

EXPLANATION 5

Where the donor is a minor, or a person suffering from a disability, or a ward of a court, the legal guardian of such person shall be entitled to act for him at the election as a voter, so long as the minority or disability continues or so long as he is a ward of court. Where the same person is not the legal guardian of the person and property of a minor, the legal guardian of the property shall be deemed to be the guardian.

PERSONS REPRESENTING LEARNED PROFESSIONS AND INDUSTRY AND COMMERCE

- (xv) Ten persons representing the learned professions to be elected by the Court, of whom at least five shall be persons residing outside the State of Uttar Pradesh;
- (xvi) three representatives of the All-India Muslim Educational Conference;
- (xvii) five persons representing industry and commerce, to be elected by the Court;

REPRESENTATIVES OF PARLIAMENT

(xviii) Three representatives of Parliament, two to be elected by the House of the People in such manner as the Hon'ble the Speaker may direct and one to be elected by the Council of State in such manner as the Chairman of the Council may direct :

Provided that until both Houses of Parliament are constituted, the three members may be elected by the Provisional Parliament.

REPRESENTATIVES OF MUSLIM CULTURE AND LEARNING

(xix) Five persons representing Muslim culture and learning to be elected by the Court.

- (xx) (a) Not more than five persons to be nominated by the Visitor ;
- (b) not more than two persons to be nominated by the Chief Rector ; and
- (c) not more than three persons to be nominated by the Chancellor :

Provided that in making nominations under sub-items (a) and (c) due regard shall be had to the representation of the different areas of the country, in view of the all-India character of the University :

Provided further that no employee of the University shall be eligible to be a member under any of the items (xiii), (xiv), (xv), (xvi), (xvii), (xviii), (xix) or (xx).

(2) If any body of persons entitled to elect a member fails to do so within the time prescribed by the Court, the Court may appoint as members any person whom that body of persons could have elected as a member :

Provided that in the case of first elections to the Court, the powers conferred upon the Court by this clause shall be exercisable by the Executive Council.

(3) Save as otherwise expressly provided, a member of the Court shall hold office for a period of five years.

(4) The method of election shall be as laid down in the Ordinances.

(5) The proceedings of the first meeting of the Court, including any adjourned meeting thereof, after the commencement of the Aligarh Muslim University (Amendment) Act of 1951, shall be valid notwithstanding the existence of vacancies under items (xiii) to (xx), inclusive of clause (1) of this Statute.

9. *Omitted.*

10. *Omitted.*

11. *Omitted.*

12. *Omitted.*

13. **Meetings of the Court.**—(1) An annual meeting of the Court shall be held on a date to be fixed by the Executive Council, unless some other date has been fixed by the Court in respect of any year. At such annual meeting, a report of the working of the University during the previous year, together with a statement of the receipts and expenditure, the balance-sheet, as audited and the financial estimates

shall be presented and any vacancies among the officers of the University or among the members of the Court or the Executive Council or the Finance Committee which ought to be filled up by the Court shall be so filled up.

(2) A copy of the statement of receipts and expenditure, the balance-sheet and the financial estimates referred to in clause (1) shall be sent to every member of the Court at least seven days before the date of the annual meeting, and shall be open to inspection of all members of the Court and the Academic Council at the office of the University during the year following such annual meeting, at such reasonable hours and under such conditions as the Executive Council may determine.

(3) Twenty-five members of the Court shall form a quorum.

(4) Special meetings of the Court may be convened by the Executive Council or the Vice-Chancellor, or, if there is no Vice-Chancellor, by the Pro-Vice-Chancellor or, if there is no Pro-Vice-Chancellor, by the Registrar :

Provided that a special meeting of the Court shall also be called if one-third of the members of the Court or fifty members, whichever number is less, make a requisition in writing in this behalf.

14. Powers in respect of granting and withdrawing degrees.—(1) The Court may, by resolutions passed by a majority of not less than two-thirds of the members present and voting—

- (a) on the recommendation of the Academic Council, through the Executive Council, make proposals to the Chancellor for the conferment of honorary degrees ;
- (b) on the recommendation of the Executive Council, withdraw any ordinary degree or diploma conferred by the University ; and
- (c) with the sanction of the chancellor, withdraw any honorary degree.

(2) In cases of urgency the chancellor may, on the recommendation of the Executive Council alone, confer an honorary degree.

15. Executive Council.—(1) The Executive Council shall consist of the following members, namely :—

- (i) Vice-Chancellor ;
- (ii) Pro-Vice-Chancellor, if any ;
- (iii) Treasurer ;
- (iv) three Deans, by rotation according to seniority ;
- (v) Principals of two Colleges, other than the Principal of the Women's College, to be members by rotation for a term of three years ;
- (vi) Principal of the Women's College ;
- (vii) One Provost, by rotation according to seniority ;
- (viii) Proctor ;
- (ix) five persons, none of whom shall be an employee of the University, elected by the Court from among its members, of whom at least three shall be persons residing outside the State of Uttar Pradesh :

Provided that until such persons are elected by the Court their places shall be filled by persons nominated by the Visitor ;

- (x) two persons nominated by the Visitor ;
- (xi) one person nominated by the Chief Rector ; and
- (xii) one person nominated by the Chancellor.

(2) Members of the Executive Council, referred to in items (v) and (ix) to (xii) of clause (1) shall hold office for a term of three years.

(3) Eleven members of the Executive Council shall form a quorum.

16. Powers of the Executive Council.—(1) The Executive Council shall, subject to the control of the Court, have the management and administration of the whole revenue and property of the University and the conduct of all administrative affairs of the University not otherwise provided for.

(2) Subject to the provisions of the Act, the Statutes and the Ordinances, the Executive Council shall, in addition to all other powers vested in it, have the following powers, namely—

(i) to appoint, from time to time, the Registrar, Librarian, Principals of colleges and institutions established by the University and such Professors, Readers, Lecturers and other members of the teaching staff as may be necessary, on the recommendation of the Selection Committee constituted for the purpose :

Provided that no action shall be taken by the Executive Council in respect of the number, qualifications and the emoluments of teachers, otherwise than after consideration of the recommendations of the Academic Council ;

(ii) to appoint members of the administrative staff or to delegate the power of appointment to such authority or authorities or officers as the Executive Council may, from time to time, by resolution, either generally or specially direct ;

(ii-A) to grant leave of absence to any officer of the University, other than the Chancellor, the Pro-Chancellor and the Vice-Chancellor, and to make the necessary arrangements for the discharge of the functions of such officer during his absence ;

(iii) to manage and regulate the finances, accounts, investments, property, business and all other administrative affairs of the University and, for that purpose, to appoint such agents as it may think fit ;

(iv) to invest any money belonging to the University, including any unapplied income, in such stocks, funds, shares or securities as it shall, from time to time, think fit, or in the purchase of immovable property in India, with the like power of varying such investments from time to time ;

(v) to transfer or accept transfers of any movable or immovable property on behalf of the University ;

(vi) to provide the buildings, premises, furniture and apparatus and other means needed for carrying on the work of the University ;

- (vii) to enter into, vary, carry out and cancel contracts on behalf of the University ;
- (viii) to entertain, adjudicate upon, and, if thought fit, redress any grievances of the officers of the University, the teaching staff, the students and the University's servants, who may, for any reason, feel aggrieved otherwise than by an act of the Court ;
- (ix) to appoint Examiners and Moderators and, if necessary, to remove them, and to fix their fees, emoluments and travelling and other allowances, after consulting the Academic Council ;
- (x) to maintain a register of donors to the University ;
- (xi) to select a Common Seal for the University and provide for the custody and use of the Seal ;
- (xii) to make such special arrangements as may be necessary for the residence and discipline of women students after consulting the Managing Committee of the Women's College ; and
- (xiii) to exercise such other powers and perform such other duties as may be conferred or imposed on it by the Act or the Statutes.

17. Academic Council.—(1) The Academic Council shall consist of the following members, namely :—

- (i) Vice-Chancellor ;
- (ii) Pro-Vice-Chancellor, if any ;
- (iii) Deans of Faculties ;
- (iv) Heads of Departments of Studies ;
- (v) Principals of Colleges ;
- (vi) Provosts ;
- (vii) Proctor ;
- (viii) Librarian ;
- (ix) four teachers of the University, elected from among themselves by the teachers, other than those falling under items (i) to (viii) :

Provided that at least one such teacher shall be a Reader and one a Lecturer ;

- (x) four persons, not being employees of the University, co-opted by the Academic Council for their special knowledge :

Provided that the total number of members under items (i) to (viii) shall not exceed thirty-two and, in case the number so exceeds, members under items (iv), (v) and (vi) shall be in proportion to the total number of Heads of Departments of Studies, Principals of Colleges and Provosts respectively, and such members shall hold office by rotation according to seniority.

(2) All members of the Academic Council, other than *ex-officio* members, shall hold office for a term of three years.

(3) Twenty members of the Academic Council shall form a quorum.

18. Powers of the Academic Council.—Subject to the Act, the Statutes and the Ordinances, the Academic Council shall, in addition to all other powers vested in it, have the following powers, namely—

- (i) to report on any matter referred to or delegated to it by the Court or the Executive Council ;
- (ii) to make recommendations to the Executive Council with regard to—
 - (a) the creation of teaching posts in the University and Colleges and the abolition thereof ; and
 - (b) the classification of the posts referred to in sub-item (a) and their emoluments and the duties attaching thereto ;
- (iii) to formulate and modify or revise schemes for the organisation of Faculties, and to assign to such Faculties their respective subjects and also to report to the Executive Council as to the expediency of the abolition or sub-division of any Faculty or the combination of one Faculty with another ;
- (iv) to make special arrangements, if any, for the teaching of women students and for prescribing for them special courses of study, after consulting the Managing Committee of the Women's College ;
- (v) to make such arrangements for the instruction and examination of persons not being members of the University as may be necessary ;
- (vi) to promote research within the University and to require, from time to time, reports on such research ;
- (vii) to consider proposals submitted by the Faculties ;
- (viii) to appoint committees for admissions to the University ;
- (ix) to recognise diplomas and degree of other Universities and institutions and to determine their equivalence with the diplomas and degrees of the Aligarh Muslim University ;
- (x) to fix, subject to any conditions accepted by the Court, the time, mode and conditions of competition for Fellowships, Scholarships and other prizes, and to award the same ;
- (xi) to make recommendations to the Executive Council in regard to the appointment of examiners and, if necessary, their removal and the fixation of their fees, emoluments and travelling and other allowances ;
- (xii) to make arrangements for the conduct of examinations and to fix dates for holding them ;
- (xiii) to appoint, whenever necessary, Inspectors or Boards of Inspectors for inspecting Colleges applying for admission to the privileges of the University ;
- (xiv) to declare the results of the various University examinations, or to appoint committees or officers to do so, and to make recommendations regarding the conferment or grant of degrees, honours, diplomas, licences, titles and marks of honour ;
- (xv) to award stipends, scholarships, medals and prizes to make other awards, in accordance with the Ordinances and such other conditions as may be attached to the awards ;

- (xvi) to publish lists of prescribed or recommended text books and to publish syllabuses of the prescribed courses of study ;
- (xvii) to prepare such forms and registers as are from time to time prescribed by the Ordinances ; and
- (xviii) to perform, in relation to academic matters, all such duties and to do all such acts as may be necessary for the proper carrying out of the provisions of the Act, the Statutes and the Ordinances.

18-A. Faculties and Departments.—(1) The University shall comprise the following Faculties :—

- (i) Faculty of Theology ;
- (ii) Faculty of Arts ;
- (iii) Faculty of Science ;
- (iv) Faculty of Engineering and Technology ; and
- (v) such other Faculties as may be prescribed by these Statutes.

(2) (a) Each Faculty shall consist of such Departments as may be assigned to it by the Ordinances.

(b) No Department shall be established or abolished except by the Statutes :

Provided that all Departments which have been established in accordance with the Act, the Statutes or the Ordinances as in force immediately before the commencement of the Aligarh Muslim University (Amendment) Act, 1951 shall be deemed to be Departments established by these Statutes.

- (c) Each Department shall consist of the following members, namely—
 - (i) Teachers of the Department ;
 - (ii) Persons conducting research in the Department ;
 - (iii) Dean of the Faculty or Deans of the Faculties concerned ;
 - (iv) Honorary Professors, if any, attached to the Department ; and
 - (v) such other persons as may be members of the Department in accordance with the provisions of the Ordinances.

- (d) Each Department shall have a Head who may be a Professor or, if there is no Professor, a Reader and whose duties and functions and terms and conditions of appointment shall be laid down by Ordinances :

Provided that if there are more Professors or, as the case may be, Readers, than one in any Department, no person shall be appointed to be the Head of any Department except in accordance with the provisions made in respect thereof by the Ordinances :

Provided further that if there is no Professor or Reader in a Department, the Dean of the Faculty concerned shall act as the Head of that Department.

- (3) Each Faculty shall consist of the following members, namely—

- (i) Dean of the Faculty, who shall be the Chairman ;
 - (ii) Principals of all Colleges teaching subjects assigned to the Faculty ;
 - (iii) All Professors in the Faculty ;
 - (iv) One Reader and one Lecturer by rotation according to seniority from each Department in the Faculty ;
 - (v) One teacher concerned, by rotation according to seniority, from the Women's College :
- Provided that the College provides instruction in any of the subjects assigned to the Faculty ;
- (vi) Persons not connected with the University having expert knowledge of the subject or subjects concerned, co-opted by the Faculty, one for each Department of the Faculty ; and
 - (vii) Five members elected by the Academic Council for their special knowledge of any subject assigned to the Faculty or of any allied branch of knowledge.

(4) All members of a Faculty, other than *ex-officio* members shall hold office for a term of three years.

(5) The conduct of the meetings of a Faculty, the quorum required for each Faculty and the constitutions of the Boards of Studies shall be prescribed by the Ordinances.

18-B. Heads of Department.—Every Head of a Department of Studies who is a Professor shall, by rotation according to seniority, for a period of two years act as the Dean of the Faculty :

Provided that if in any Faculty there is no Professor, the seniormost Reader shall act as the Dean, and if there is no Reader, the Vice-Chancellor or the Pro-Vice-Chancellor, if so designated by the Vice-Chancellor, shall act as the Dean.

18-C. Powers of the Faculties.—The Faculties shall have such powers and shall perform such duties as may be assigned to them by those Statutes and the Ordinances and shall, from time to time, appoint such and so many Boards of Studies in different branches of knowledge as may be prescribed by the Ordinances. They shall also consider and make such recommendations to the Academic Council on any question pertaining to their respective sphere of work as may appear to them necessary or on any matter referred to them by the Academic Council.

19. *Omitted.*

19-A. Finance Committee.—The Finance Committee shall consist of the following members, namely—

- (i) Vice-Chancellor (Chairman) ;
- (ii) Pro-Vice-Chancellor, if any ;
- (iii) Two persons nominated by the Visitor ;
- (iv) Two persons, who are not employees of the University,

elected by the Court, at least one of whom shall be a person who is not a member of the Executive Council;

(v) Treasurer (Convener).

(2) Three members of the Finance Committee shall form a quorum.

(3) All members of the Finance Committee, other than *ex-officio* members, shall hold office for a term of three years.

(4) The Vice-Chancellor shall preside at the meetings of the Finance Committee. In the absence of the Vice-Chancellor, the Treasurer shall preside at a meeting thereof.

(5) A member of the Finance Committee shall have the right to record a minute of dissent if he dissents from his colleagues.

(6) The Finance Committee shall meet at least twice every year to examine accounts and to scrutinize proposals for expenditure.

(7) The annual accounts and the financial estimates of the University prepared by the Treasurer shall be laid before the Finance Committee for consideration and comments and thereafter submitted to the Executive Council for approval.

(8) The Finance Committee shall fix limits for the total recurring expenditure and the total non-recurring expenditure for the year, based on the income and resources of the University (which, in the case of productive works, may include the proceeds of loans). No expenditure shall be incurred by the University in excess of the limits so fixed.

(9) No expenditure other than that provided for in the budget shall be incurred by the University without the approval of the Finance Committee.

19-B.—(1) The establishment of Colleges and institutions and the abolition thereof shall be governed by the Statutes :

Provided that all colleges and institutions which have been established in accordance with the Act, the Statutes or the Ordinances in force immediately before the commencement of the Aligarh Muslim University (Amendment) Act, 1951, shall be deemed to be Colleges and institutions established by the Statutes.

19-C. Admission of Colleges and Institutions to privileges of University.—(1) Colleges and other institutions within a radius of fifteen miles from the University Mosque may be admitted to such privileges of the University as the Executive Council may decide on the following conditions, namely :—

(i) Every such college or institution shall have a regularly constituted Managing Body, consisting of not more than twenty persons approved by the Executive Council and including, among others, at least two representatives of the University and at least three representatives of the teaching staff, of whom the Principal of the college or institution shall be one ;

(ii) Every such college or institution shall satisfy the Executive Council on the following points, namely :—

- (a) the suitability and adequacy of its accommodation and equipment for teaching ;
 - (b) the qualifications and adequacy of its teaching staff and the conditions of their service ;
 - (c) the arrangements for the residence, welfare, discipline and supervision of its students ; and
 - (d) such other matters as are essential for the maintenance of the standards of University education ; and
- (iii) No college or institution shall be admitted to any privileges of the University except on the recommendation of the Academic Council made after considering the report of a committee of inspection appointed for the purpose by the Academic Council.

(2) Appointments to the teaching staff of such college or institution shall be made on the recommendation of a Selection Committee, which shall include the Principal (unless the post to be filled is that of the Principal), at least one of the representatives of the University on the Managing Body and one expert nominated by the Academic Council.

(3) Every such college or institution shall be inspected at least once every year by a committee appointed by the Academic Council, and the report of that committee shall be submitted to the Academic Council, which shall forward the same to the Executive Council with such recommendations as it may deem fit to make. The Executive Council, after considering the report and the recommendations, if any, of the Academic Council, shall forward a copy of the report to the Managing Body of the College or institution, with such remarks, if any, as it may deem fit, for suitable action.

(4) The Executive Council may, after consulting the Academic Council, withdraw any privileges granted to a college or institution if at any time it considers that the college or institution is not fulfilling the requisite conditions :

Provided that before any privileges are so withdrawn the Managing Body shall be given an opportunity to represent to the Executive Council why such action should not be taken.

(5) Subject to the conditions set forth above, the Ordinances may prescribe any other conditions which may be considered necessary and also the procedure for the admission of Colleges and institutions to the privileges of the University and for the withdrawal of those privileges.

20. Selection Committee.—(1) The Selection Committee for any appointment specified in column (1) of the Table hereto annexed shall consist of the Vice-Chancellor, the Pro-Vice-Chancellor (if any), a nominee of the Visitor and the persons specified in the corresponding entry in column (2) of the said Table :

Provided that the Principal of the Muslim University Women's College, shall also be an *ex-officio* member of the Selection Committee for the appointment of a teacher in that College.

THE TABLE

(1)	(2)
Professor	<ul style="list-style-type: none"> (i) The Dean of the Faculty ; (ii) The Head of Department concerned, if he is a Professor ; (iii) These persons, not connected with the University, nominated by the Academic Council for their special knowledge of or interest in the subject with which the Professor will be concerned.
Reader or Lecturer	<ul style="list-style-type: none"> (i) The Dean of the Faculty ; (ii) The Head of the Department concerned ; (iii) Two persons, not connected with the University, nominated by the Academic Council for their special knowledge of, or interest in the subject with which the Reader or Lecturer will be concerned.
Registrar	<ul style="list-style-type: none"> (i) Treasurer ; (ii) Two members of the Executive Council nominated by it.

(2) The Vice-Chancellor or, in his absence, the Pro-Vice-Chancellor, if any, shall preside at the meetings of the Selection Committee.

(3) The meetings of the Selection Committee shall be convened by the Vice-Chancellor or, in his absence, by the Pro-Vice-Chancellor, if any.

(4) The Selection Committee shall consider and submit to the Executive Council recommendations as to the appointment referred to it. If the Executive Council is unable to accept the recommendations made by the Committee, it shall record its reasons and submit the case to the Visitor for final orders.

20-A.—(1) Whenever, in accordance with these Statutes, any person is to hold an office or be a member of an authority of the University by rotation according to seniority, such seniority shall be determined according to the length of continuous service of such person in his grade or post, as the case may be, and in accordance with such other principles as the Executive Council may from time prescribe.

(2) It shall be the duty of the Registrar to prepare and maintain, in respect of each class of persons to whom the provisions of this Statute apply, a complete and up-to-date seniority list in accordance with the provisions of the foregoing clause.

(3) If two or more persons have equal length of continuous service in a particular grade or post or the relative seniority of any person or persons is otherwise in doubt, the Registrar may on his own motion, and shall at the request of any such person, submit the matter to the Executive Council whose decision thereon shall be final.

21. *Omitted.*

22. Convocations.—Convocations of the University for the conferring of degrees or for other purposes shall be held in such manner as may be prescribed by the Ordinances.

23. Committees.—Any authority of the University may appoint such and so many standing or special committees as it may deem fit, and may appoint to them persons who are not members of such authority. Such committees may deal with any subject delegated to them, subject to subsequent confirmation by the authority appointing them.

24. Acting Chairman of meetings.—Where no provision is made for a President or Chairman to preside over a meeting, authority or committee or when the President or Chairman so provided for is absent, the members present shall elect one of their member to preside at the meeting.

25. Resignations.—(1) Any member, other than an *ex-officio* member, of the Court, the Executive Council, the Academic Council or any other University, authority or committee may resign by letter addressed to the Registrar, and the resignation shall take effect as soon as such letter is received by the Registrar.

(2) Any officer of the University, whether salaried or otherwise, other than a Dean, may resign his office by letter addressed to the Registrar :

Provided that such resignation shall take effect only on the date from which the same is accepted by the authority competent to fill the vacancy.

25-A. Removal of members and officers.—(1) Any member of the Court, the Executive Council or the Academic Council may be removed by a resolution of the Court, the Executive Council or the Academic Council, as the case may be, passed by a majority of not less than two-thirds of its members on either of the following grounds, namely—

- (i) the member has become incapable of performing his duties ;
- (ii) the member has been convicted by a court of law of an offence which, in the opinion of the Court, the Executive Council or the Academic Council, as the case may be, involves moral turpitude.

(2) Notwithstanding anything contained in the terms of his appointment, any officer of the University, salaried or otherwise, may be removed from that office by the authority which is competent to fill the vacancy on either of the following grounds, namely

- (i) the officer has become incapable of performing his duties ;
- (ii) the officer has been convicted by a court of law of an offence which, in the opinion of the Court, the Executive Council, or the Academic Council, as the case may be, involves moral turpitude :

Provided that nothing in this clause shall be deemed to affect any rights accruing to an officer appointed on contract in accordance with the terms of that contract.

25-B. Residence, condition for membership and office.—Notwithstanding anything contained in these Statutes, no person who is not ordinarily resident in India shall be eligible to be an officer of the University or a member of any authority of the University.

25-C. Membership of Authorities by virtue of membership of other Bodies.—Notwithstanding anything contained in these Statutes, a person who holds any post in the University or is a member of

any authority or body of the University in his capacity as a member of a particular authority or body or as the holder of a particular appointment shall hold office so long only as he continues to be a member of that particular authority or body or the holder of that particular appointment, as the case may be.

26.—Omitted.

27.—Omitted.

28. Membership of Old Boys Association.—(1) The subscription for membership of the Alumni (Old Boys) Association payable after the commencement of the Aligarh Muslim University (Amendment) Act, 1951 shall be prescribed by the Ordinances.

(2) No member of the Association shall be entitled to vote or stand for election unless he has been a member of the Association for at least one year prior to the date of the election and is a graduate of at least five years' standing of the University.

29. Provident Fund.—The management of the Provident Fund constituted under Section 37 (1) of the Act shall be vested in the Executive Council which shall maintain a separate account of the same.

30. Only persons in permanent whole-time service or persons appointed for a period of not less than four years (as whole-time servants) shall be entitled to subscribe to the Provident Fund ; that is, probationers, part-time servants and temporary or officiating servants shall be excluded :

Provided that no person shall be entitled to subscribe to the Provident Fund whose salary is less than Rs. 25 pm.

31. (1) The rate of contribution by subscribers shall be 4, 8, 12, 16, 20 or 24 per cent. of the salary of the employee for the previous month and the amount calculated on this basis shall be deducted from the monthly salary of the employee :

Provided that no contribution shall be made to the Provident Fund by a subscriber who is on leave without pay.

(2) The University shall contribute to the Fund such sum equal to a percentage of the salary of each employee as may be approved by the Central Government.

(3) The interest on both these contributions shall accrue to the account of the subscriber.

32. (1) The amounts accruing to the Fund shall be placed month by month in such securities as are approved of by the Executive Council on the recommendation of the Provident Fund Committee.

(2) The contribution made by subscribers and the contribution of the University shall be credited monthly to the separate account of each subscriber.

(3) The accounts of the Fund shall be audited once a year by the University auditor or auditors and a copy of the balance sheet of the Fund shall be sent to every subscriber, together with a statement of the amount standing to his credit.

33. When a subscriber leaves the University or dies in the service of the University, the Executive Council shall, on the recommendation of the Provident Fund Committee, make payment to him or his estate

or person or persons nominated by him under Statute 37 out of Provident Fund under the following conditions:—

- (a) If a subscriber leaves or dies before completing his four years' service, he shall be entitled to the amount which he himself has contributed under Statute 31 (1) together with the interest thereon and the remaining amount shall be paid back to the University.
- (b) If a subscriber leaves or dies after completing four years' but less than eight years' service he shall be entitled to the full amount contributed by him with interest together with half of the amount contributed by the University with interest.
- (c) If a subscriber leaves or dies after completing eight years' service he shall be entitled to the total amount standing to his credit in the Provident Fund on the date of his ceasing to be in service.
- (d) When a sum becomes payable to a subscriber under items (b) and (c) above, the Treasurer of the University will be entitled to deduct therefrom any amount due under any liability incurred by the subscriber to the University but not exceeding in any case the total amount of any contributions credited to the account of the subscriber by the University and of any interest which has accrued on such contributions.

34. No employee of the University shall be entitled to the benefits of the Provident Fund whose services in the University entitled him to a pension or on whose account the University contributes towards his pension and leave allowance or who has been appointed by the University on special terms precluding him from subscribing to the Provident Fund.

35. (a) No payment shall be made until the subscriber quits his service or dies. But in case of urgent necessity the Executive Council may, on the recommendation of the Provident Fund Committee, make an advance of a sum equivalent to not more than six months' salary, provided that the amount advanced does not exceed the amount actually subscribed by him with interest.

(b) Such advances shall be recovered with interest at the rate of 5 per cent. per annum in not more than twenty four instalments, each of which shall not be less than one twenty-fourth of the total amount advanced:

Provided that, if an advance is required for the purpose of building or purchasing a house, the maximum limit of the advance may be equal to twelve months' salary of the subscriber out of his own contributions to the Fund, to be repaid in such instalments, not exceeding forty-eight, as the Executive Council may determine.

(c) Recovery of advances shall be made monthly by deduction from salary commencing from the first payment of a full month's salary after the advance is granted, but no recovery shall be made from a subscriber when he is on leave of any kind other than casual leave.

When a subscriber has already taken an advance he shall not be allowed to make another advance until the amount already advanced has been fully paid up.

35-A. On a written application from a subscriber to the Provident Fund and with the approval of the Executive Council, the University may allow premia on the life insurance policy of the subscriber to be paid out of the subscriber's share in his Provident Fund. In all such cases the life insurance policy for which the premia are so paid shall be assigned in favour of the University. On the retirement of the subscriber from the service of the University, the policy shall be reassigned to him by the University. In case of maturity of the policy during the pendency of the service of the subscriber in the University, the full amount of the policy shall be credited to the Provident Fund of the subscriber. In the case of the death of the subscriber during the service of the University, the full amount of the policy shall be paid to the legal representative of the deceased entitled to the Provident Fund.

36. Every servant of the University entitled to the benefit of the Provident Fund shall be presumed to have read and accepted the rules of the Provident Fund.

37. (a) A subscriber may file a written declaration in the form appended to these rules which will be treated as his will for the purpose of payment of his money after his death. The declaration shall be kept by the Treasurer.

(b) Such subscriber may, from time to time, change his declaration and file a fresh declaration.

Form of Declaration

Depositor's no.

(for depositor)

I hereby declare that in the event of my death the following persons shall be entitled to receive payment of the amount of my deposit in the Provident Fund in the proportions noted against their names and I make this my will so far as regards such deposit.

I also request that the amount payable as above to the minors be paid to the person named below :—

Name and address of the nominee	Relationship with the subscriber	Whether major or minor, if minor, state age	Share of the deposit payable	Name and address of the persons to whom share is to be paid on behalf of minors.	Sex and parentage of persons referred to in previous Column

Two witnesses to signature

{ 1.....
2.....

Here state married or unmarried.....

(Signature)

38. Such subscribers of the Provident Fund as were in the service of the late M. A. O. College and are still in the service of the University, shall have their periods of service counted from the time they were first appointed for the purposes of Statute 33.

39.—Omitted.

40. (1) A gratuity equal to one-half month's pay for every completed year of service may be paid to a permanent servant or employee of the University, if he has been permitted to retire from the service of the University on account of his physical incapacity to continue in its service :

Provided that the total amount of such gratuity, shall not exceed Rs. 240 in any case :

Provided further that no gratuity shall be payable to a servant or employee of less than ten years' standing or entitled to a salary of Rs. 25 per mensem or over.

(2) If such servant or employee dies while in the service of the University after completing a service of ten years, such compassionate allowance, not exceeding the pay of such servant or employee for three months, may be paid to such members of his family as may have been dependent on him for their livelihood as the Executive Council may, in view of the circumstances of each case, determine.

41. There shall be a Provident Fund Committee for the purpose of advising the Executive Council in matters relating to investments, payments, etc. of the Provident Fund.

42. The Provident Fund Committee shall consist of the following :—

- (i) The Vice-Chancellor ;
- (ii) The Registrar ;
- (iii) The Treasurer (Convener) ;
- (iv) The Chief Accountant ;
- (v) Two subscribers to the Provident Fund to be elected by the subscribers.

THE ALLAHABAD UNIVERSITY ACT, 1921

(UNITED PROVINCES ACT No. III OF 1921)

CONTENTS

Sections

1. Short title and commencement.
2. Definitions.
3. The University.
4. Vacation of Fellowships.
5. Powers of the University.
6. University open to all classes, castes and creeds.
7. Teaching of the University.
8. Visitation.
9. Officers of the University.
10. The Chancellor.
11. The Vice-Chancellor.
12. Powers and duties of the Vice-Chancellor.
13. The Treasurer.
14. The Registrar.
15. Other officers.

Sections

- AUTHORITIES OF THE UNIVERSITY
16. Authorities of the University.
17. The Court.
18. Meetings of the Court.
19. Powers and duties of the Court.
20. The Executive Council.
21. Powers and duties of the Executive Council.
22. The Academic Council.
23. The Committee of Reference.
24. The Faculties.
25. Other authorities of the University.
26. [Repealed.]
- UNIVERSITY BOARDS
27. University Boards.
28. [Repealed.]
- TEACHERS
29. Teachers.

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Provided that the total amount of such gratuity, shall not exceed Rs. 240 in any case :

Provided further that no gratuity shall be payable to a servant or employee of less than ten years' standing or entitled to a salary of Rs. 25 per mensem or over.

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1. Short title and commencement.
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5. Powers of the University.
6. University open to all classes, castes and creeds.
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9. Officers of the University.
10. The Chancellor.
11. The Vice-Chancellor.
12. Powers and duties of the Vice-Chancellor.
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24. The Faculties.
25. Other authorities of the University.
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- UNIVERSITY BOARDS
27. University Boards.
28. [Repealed.]
- TEACHERS
29. Teachers.

STATUTES, ORDINANCES AND REGULATIONS

- 30. Statutes.
- 31. Statutes how made.
- 32. Ordinances.
- 33. Ordinances how made.
- 34. Regulations.

RESIDENCES : COLLEGES AND HOSTELS

- 35. Residences.
- 36. Colleges and hostels.

ADMISSION AND EXAMINATIONS

- 37. Admission to University courses.
- 38. Examinations.

ANNUAL REPORT AND ACCOUNTS

- 39. Annual Report.
- 40. Annual Accounts.

SUPPLEMENTARY PROVISIONS

- 41. Removal from membership of the University.
- 42. Disputes as to constitution of University authorities or bodies.
- 43. Constitution of committees.
- 44. Filling of casual vacancies.

- 45. Proceedings of University and bodies not invalidated by vacancies.

- 46. Conditions of service.

- 47. Tribunal of Arbitration.

- 48. Pension or Provident Fund.

- 49. Territorial exercise of powers.

TRANSITORY PROVISIONS

- 50. Completion of course for students in colleges affiliated to the Allahabad University under previous Act.

- 51. Appointment of first Vice-Chancellor.

- 52. Withdrawal of control of existing University over schools.

- 53. First appointments of University staff.

- 54. General powers of the Vice-Chancellor.

- 55. Repeal of certain enactments.

SCHEDULE I

STATUTES

SCHEDULE II

[As amended and adopted upto Act V of 1955]

(Received the assent of the Governor on the 3rd December, 1921, and of the Governor-General on the 11th January, 1922, and was published under Section 81 of the Government of India Act¹ on the 25th March, 1922.)

An Act to provide for the reorganization of the Allahabad University

WHEREAS by the Allahabad University Act, 1887 University was established and incorporated at Allahabad ;

And whereas the law relating to the said University was amended by the Indian Universities Act, 1904 ;

And whereas it is expedient to reorganize the system of Government of the said University with a view to establishing a unitary teaching and residential University at Allahabad * * *²; It is hereby enacted as follows :

Prefatory Note :—For S. O. R., see Gaz., 1921, Pt. VIII, p. 554; for R. S. Com., see *ibid.*, p. 915; for discussion, see L. C. Pro. d. July 25, 1921, July 28, 1921, Oct. 24, 1921, Nov. 9, 1921, Nov. 10, 1921, and Nov. 11, 1921, in Vol. III, p. 54, Vol. III, pp. 274–324, Vol. IV, p. 25, Vol. IV, pp. 493–504, Vol. IV pp. 508–557 and Vol. IV, pp. 564–629, respectively.

1. **Short title and commencement.**—(1) This Act may be called the Allahabad University Act, 1921.

(2) This section shall come into force at once. The rest of this Act shall, save as otherwise expressly provided herein, come into force on such date or dates as the [State Government]³ may by notification in the [Official Gazette]⁴ appoint and different dates may be appointed for different provisions of this Act.

1. Rep.
2. The words "while enabling the University to continue to exercise dual control over the quality and character of the teaching given in its name by colleges

affiliated to the University of Allahabad" rep. by S. 42 & Sch. II of the Agra University Act, 1921 (U. P. Act VIII of 1926).

3. Subs. for "L. G." by A. O.
4. Subs. for "Gazette" by *ibid.*

Note:—Ss. 53 and 54 came into force on April, 23 1922, see Not. No. 1245/XV—68, d. April 21, 1922, in Gaz., 1922, Pt. I, p. 540; Ss. 2, 5, 6, 7, 10, 28, 35, 36, 37, 48, 49, 50 and 52 on May 22, 1922, see Not. No. 56-E. N./XV—d. May 22, in Gaz., 1922, Pt. I, p. 630; Ss. 17, 18 and 19 on Dec. 5, 1922, see Not. No. 2781/XV—68, d. Dec. 5, 1922, in Gaz. 1922, Pt. I, p. 1326; Ss. 20, 21, 22, 24, 25 26 and 27 on Dec. 14, 1922, see Not. No. 2883/XV—68, d. Dec. 14, 1922, in Gaz., 1922, Pt. I, p. 1347; and remaining Ss. on Jan. 26, 1923, see Not. No. 284/XV—68, d. Jan. 26, 1923, in Gaz., 1923, Pt. I, p. 122.

The amending Act No. V of 1955, came into force on the March 5, 1955, vide notification No. C. 212/XV-154-1955 dated March 5, 1955, published in U. P. Gaz. Extra. of the same date.

2. Definitions.—In this Act, unless there is anything repugnant in the subject or context :—

- b**[(a) “College” means a unit of residence for students of the University maintained or recognised by the University in accordance with the provisions of this Act in which tutorial and supplementary instruction is provided under conditions prescribed in the Statutes.]
- b**[(aa) “Associated College” means an institution recognised by the University and authorised under the provisions of this Act to provide all the teaching necessary for admission to a degree of the University].
- (b) “Limits of the University” means the territorial limits within which colleges as defined in clause (a) may, under this Act, be situated.
- (c) “Hostel” means a unit of residence other than a college, for students of the University maintained or recognized by the University, in accordance with the provisions of this Act to the residents of which tutorial and other supplementary instruction shall be given under the direction of the University in accordance with the Ordinances.
- b**[(d) “Management” means the Managing Committee or other body charged with managing the affairs of an institution, recognised by the University.]
- b**[(e) “Delegacy” means the authority charged under this Act with the care of students of the University not residing in or attached to a college or a hostel.]
- (f) “Principal” means the head of a college [or an Associated College] * * * * 8.
- (g) “Warden” means the head of a hostel.
- b**[(gg) “Student of the University” means a person enrolled in the University for taking a course of study for a degree, diploma or other academic distinction duly instituted but does not include a person enrolled in an Associated College.]

5. Subs. by U. P. Act No. V of 1955, S. 2.
6. Added by *ibid.*
7. Clauses (d) and (e) which were previously repealed by U. P. Act VIII of 1926, have again been inserted, by S. 2 of U. P. Act V of 1955.

8. The words “or an Associated College” rep. by U. P. Act VIII of 1926, and the words “or an Associated College” added by S. 2 of U. P. Act No. V of 1955.
9. Ins. by S. 2 of U. P. Act V of 1955.

- (h) "Teachers" include Professors, Readers and Lecturers and such persons giving instruction in the University or in colleges or hostels as may be declared by the Statutes to be teachers.
- ¹⁰[(i) "Teacher of the University" means a person appointed by the University to give instruction for degrees or to guide or conduct research, in the University.]
- (j) "Registered Graduates" means graduates of the Allahabad University registered under the provisions of this Act, or of the Indian Universities Act, 1944.
- (k) "Statutes", "Ordinances" and "Regulations" mean respectively the Statutes, Ordinances and Regulations of the University for the time being in force.
- (l) "University" means the University of Allahabad as reconstructed under this Act.
- ¹¹[(m) "State Government" means the Government of Uttar Pradesh.]

THE UNIVERSITY

3. The University.—(1) The first Chancellor and Vice-Chancellor of the University and the first Members of Court of the Executive Council, of the Academic Council * * * ¹² and all persons who may hereafter become such officers or members so long as they continue to hold such office or membership are hereby constituted a body incorporated by name of the University of Allahabad.

(2) The University shall have perpetual succession and a Common Seal and shall sue and be sued by the said name.

4. Vacation of Fellowships.—(1) As from the date on which Section 3 and this section are brought into operation, all Fellows and Honorary Fellows of the University of Allahabad, as constituted and incorporated by any Act or Acts heretofore in force shall cease to be Fellows.

(2) All references in any enactment or other instrument of whatever nature to the University of Allahabad, as constituted prior to the commencement of this Act, shall be construed as references to the University as reconstructed under Section 3.

5. Powers of the University.—The University shall have the following powers namely :—

- (1) to provide for instruction in such branches of learning as [may be prescribed by the Ordinances] ¹³ and to make provision for research and for the advancement and dissemination of knowledge ;
- ¹⁴[(2) to institute degrees, diplomas and other academic distinctions, and to hold examinations for and grant and confer such degrees, diplomas and distinctions to and on persons who—
10. *Subs.* by *ibid.*
11. *Added* by *ibid.*
12. The words "and of the Council of Associated Colleges of the University" rep. by S. 42 and Sch. II of the Agra University Act, 1926
13. (*U. P. Act VIII of 1926*).
14. *Subs.* for the words "the University may think fit" by S. 3 of Act V of 1955.
11. *Subs.* by *ibid.*

- (a) shall have pursued a course of study in the University or an Associated College, or carried on research in the University under conditions prescribed in the Statutes or Ordinances, or
- (b) are teachers in educational institutions satisfying conditions prescribed by the Ordinances in this behalf, or
- (c) shall have carried on research in an institution recognized in that behalf by the University or independently, under conditions laid down in the Statutes and Ordinances,

and shall have passed the examinations of the University under conditions prescribed in the Statutes and the Ordinances.]

(3) to confer honorary degrees or other distinction on approved persons in the manner laid down in the Statutes;

(4) [Deleted].¹⁸

(5) ¹⁹[to recognise Associated Colleges];

(6) to inspect all colleges, hostels,²⁰ [and Associated Colleges];

(7) to co-operate with other Universities and authorities in such manner and for such purposes as the University may determine;

(8) to institute Professorships, Readerships, Lecturerships and any other teaching posts required by the University, and to appoint persons to such Professorships, Readerships, Lecturerships and posts;

(9) to recognize teachers as qualified to give instruction in colleges and hostels;

(10) to institute and award Fellowships, Scholarships, Exhibitions and Prizes in accordance with the Statutes and the Ordinances;

(11) to institute, maintain and manage colleges and hostels and to recognize colleges and hostels not maintained by the University.

(12) to demand and receive such fees as may be prescribed in the Ordinances;

(13) to supervise and control the residence and discipline of students of the University, and to make arrangements for promoting their health and general welfare; and

(14) to do all such other acts and things whether incidental to the powers aforesaid or not, as may be requisite in order to further the objects of the University as a teaching and examining body, and to cultivate and promote arts, science and learning.

6. University open to all classes, castes and creeds.—The University shall be open to all persons of either sex of whatever race, creed or class, and it shall not be lawful for the University to adopt or impose on any person any test whatsoever of religious belief or profession in order to entitle him to be admitted thereto as a teacher or student or to hold any office therein, or to graduate thereat or to enjoy or exercise any privileges thereof, except where such test is specially prescribed by the Statutes, or, in respect of any particular benefaction

15. Deleted by S. 3 of U. P. Act V of 1955.

16. Clause (5) which was previously deleted by U. P. Act VIII of 1926, has been again inserted by *ibid.*

17. These words which were previously deleted by U. P. Act VI of 1926, has been again inserted by *ibid.*

accepted by the University where such test is made a condition thereof, by any testamentary or other instrument creating such benefaction :

Provided that nothing in this section shall be deemed to prevent persons (whether teachers of the University or not), who have been approved for the purpose by the Executive Council, from giving religious instruction in the manner prescribed by the Ordinances to those who are not unwilling to receive it :

¹⁸[Provided further that nothing in this section shall be deemed to require the University to admit to any course of study a larger number of students than may be determined by the Ordinances.]

7. Teaching of the University. ¹⁹[(1) Teaching in courses prescribed for the degrees of the University shall include lecturing work in laboratories and workshops and other teaching conducted in or by the University or in an Associated College in accordance with any syllabus prescribed by the Ordinances and Regulations. The authorities responsible for organising such teaching shall be prescribed by the Statutes.

¹⁹(2) The courses of study and the curricula shall be prescribed by the Ordinances and subject thereto by Regulations.

¹⁹(3) Teaching given by teachers of the University shall be supplemented by tutorial and other supplementary instruction given in the University or under the authority of the University in colleges and hostels. Teaching given by the teachers of an Associated College shall be supplemented by tutorial and other supplementary instruction given in the Associated College or in a residential unit attached to it or in another Associated College or in the University under an arrangement made between such Associated Colleges or with the University.

¹⁹(4) Where attendance at a course of instruction is prescribed as a condition of admission to an examination or a degree of the University, such condition shall include provision for attendance at teaching referred to in sub-sections (1) and (3).]

(5) It shall not be lawful for the University * * * ²⁰ to maintain classes, for the purpose of preparing students for admission to the University, beyond a period of five years from the commencement of this Act save with the previous sanction of the [State Government] ²¹ and for such period as the [State Government] ²¹, may direct nor shall the University frame courses, conduct examinations or recognize institutions for that purpose without such sanction and for such period.

VISITATION

²² [8. Visitation.—(1) The State Government shall have the right to cause an inspection to be made by such person or persons as it may direct of the University, its buildings, laboratories, workshops and equipment, and of any college, hostel or other institution maintained or recognized by the University, and also of the examinations, teaching and other work conducted or done by the University and to cause an inquiry to be made in like manner in respect of any matter connected with the University or an Associated College.

18. Added by S. 4 of U. P. Act V of 1955.
 19. Subs. by S. 5 of *ibid.*
 20. The words "or for any Associated College" rep. by U. P. Act VIII

- of 1926.
 21. Subs. for "L. G." by A. O.
 22. Subs. by S. 6 of U. P. Act V of 1955.

(2) The State Government shall in every case give notice to the University of its intention to cause an inspection or inquiry to be made, and the University shall be entitled to appoint a representative who shall have the right to be present and be heard at such inspection or inquiry.

(3) The State Government may address the Vice-Chancellor with reference to the result of such inspection or inquiry, and the Vice-Chancellor shall communicate to the Executive Council and the Court the views of the State Government with such advice as the State Government may offer upon the action to be taken thereon.

(4) The Vice-Chancellor shall then within such time as the State Government may fix, submit to it a report of the action taken or proposed to be taken by the Executive Council together with the views which the Court may have expressed on the report.

(5) If the University authorities do not, within a reasonable time, take action to the satisfaction of the State Government, the State Government may, after considering any explanation which the University authorities may furnish, issue such directions as it may think fit and the University authorities shall be bound to comply with such directions.]

OFFICERS OF THE UNIVERSITY

9. Officers of the University.—The following shall be the officers of the University :—

- (i) The Chancellor,
- (ii) The Vice-Chancellor,
- (iii) The Treasurer,
- (iv) The Registrar,
- ²³[(iv-a) The Dean of Student Welfare,]
- (v) The Deans of the Faculties, and
- (vi) Such other officers as may be declared by the Statutes to be officers of the University.

10. The Chancellor.—(1) [The Governor of Uttar Pradesh shall be the Chancellor]²⁴. He shall, by virtue of his office, be the head of the University and the President of the Court, and shall, when present, preside at meetings of the Court and at any Convocation of the University.

(2) [Deleted]²⁵.

(3) The Chancellor shall have such other powers as may be conferred on him by this Act or the Statutes.

²⁶[11. **The Vice-Chancellor.**—(1) The Vice-Chancellor shall be a whole-time officer of the University and be appointed by the Chancellor in the manner provided in this section.

(2) The emoluments and other conditions of service of the Vice-Chancellor shall be such as are prescribed by the Statutes and shall not be varied to his disadvantage after his appointment.

23. *Added by S. 7 of U. P. Act V of 1955.*

24. *Subs. for the words "the Chancellor shall be the Governor of*

the U. P." by S. 8 of ibid.

25. *Deleted by ibid.*

26. *Subs. by S. 9 of U. P. Act V of 1955.*

(3) The Vice-Chancellor shall hold office for a period of five years but may at any time relinquish office by submitting, not less than sixty days in advance of the date on which he wishes to be relieved, his resignation to the Chancellor.

(4) No person who has at any time previously held the office of Vice-Chancellor of the University otherwise than in a vacancy referred to in sub-section (8) shall be eligible for re-appointment.

(5) The Executive Council shall, as far as may be, at least forty days before a vacancy is due to occur in the office of Vice-Chancellor and also whenever so required by the Chancellor, meet for the purpose of deciding the name of the person to be recommended to fill the vacancy. If at this meeting the Executive Council decides unanimously the name of any person his name shall be recommended to the Chancellor who shall thereupon appoint him, and if it fails to decide unanimously the name of any person it shall adjourn to a date within ten days next following. At the adjourned meeting, if the Executive Council—

(a) decides unanimously the name of any person, he shall be recommended to the Chancellor who shall thereupon appoint him;

(b) is unable to decide unanimously the name of any person it shall in the same meeting decide the names of not more than three persons for being recommended to the Chancellor:

Provided that if more than three names are proposed in that behalf it shall choose three out of them according to the system of proportional representation by means of the single transferable vote. The names so chosen shall then be recommended to the Chancellor.

(6) On receipt of the recommendation under clause (b) of sub-section (5) the Chancellor may, in his discretion—

(a) appoint as Vice-Chancellor any one out of the persons recommended by the Executive Council, or

(b) return the names to the Executive Council for reconsideration.

(7) Where the Chancellor has returned the names for reconsideration under clause (b) of sub-section (6) the Executive Council shall be free—

(a) to recommend to the Chancellor the name of any person decided unanimously in which case the person whose name is so decided shall be appointed by the Chancellor, or

(b) to recommend to the Chancellor, in case it is unable to decide unanimously the name of any person, the names previously recommended by it or any names, not exceeding three in number, decided in the manner laid down in sub-section (5), and the Chancellor shall appoint anyone out of the names so recommended.

(8) Where a vacancy occurs or is likely to occur in the office of Vice-Chancellor by reason of leave, or any cause other than resignation in accordance with sub-section (3) or the expiry of the term, the Registrar shall report the fact forthwith to the Chancellor. If the vacancy is, or is likely, to last for a period exceeding six months, the Chancellor shall

call upon the Executive Council to forward its recommendations and the provisions of sub-sections (1) and (5) to (7) shall in so far as may be, apply for the filling of the vacancy. In other cases the Executive Council may, subject to the approval of the Chancellor, either appoint the Vice-Chancellor or make such other arrangements for carrying on the office of Vice-Chancellor as it may think fit.

(9) Until arrangements have been made under sub-section (8), the Registrar shall carry on the current duties of the office of Vice-Chancellor, but he shall not preside at meetings of the University Authorities.]

²⁷[12. **Powers and duties of the Vice-Chancellor.**—(1) The Vice-Chancellor shall be the principal executive and academic officer of the University, and shall, in the absence of the Chancellor, preside at meetings of the Court and at any convocation of the University. He shall be an *ex-officio* member and chairman of the Executive Council and the Academic Council. He shall have the right to speak in and to take part in the proceedings of the meetings of any other authority or body of the University but shall not merely by virtue of this sub-section be entitled to vote thereat.

(2) It shall be the duty of the Vice-Chancellor to ensure the faithful observance of the provisions of this Act, the Statutes and the Ordinances and he shall, without prejudice to the powers of the Chancellor under Section 42, possess all such powers as may be necessary in that behalf.

(3) The Vice-Chancellor shall have power to convene meetings of the Court, the Executive Council and the Academic Council :

Provided that he may delegate this power to any other officer of the University.

(4) The Vice-Chancellor shall exercise general control over the affairs of the University and shall be responsible for the due maintenance of discipline therein.

(5) The Vice-Chancellor may start disciplinary proceedings against any salaried officer or teacher of the University and may, wherever necessary, also place him under suspension. Where disciplinary proceedings have been started as aforesaid by the Vice-Chancellor and the case in his opinion—

(a) is not such as may call for punishment by dismissal, removal, stoppage of increment, or reduction in emoluments he may pass such orders as he deems fit ;

(b) is such as may call for a punishment as aforesaid, he shall hold an enquiry jointly with two other persons, appointed in the manner to be prescribed in the Statutes, one of whom is or has been Judge of a High Court.

(6) In any case in which enquiry has been held under clause (b) of sub-section (5), the Vice-Chancellor shall, upon conclusion of the enquiry, submit the report to the Executive Council. If there is a difference of opinion among the Vice-Chancellor and the persons jointly holding the enquiry with him under clause (b) of sub-section (5), regarding the recommendation to be made in the report, the recommendation shall be expressed in terms of the views of the majority. The

Executive Council shall thereupon pass orders according to the recommendations made in the report unless it differs therefrom in which case it shall refer the matter to the Chancellor with its recommendation and the Chancellor may then make such order as he deems just and proper.

(7) In any emergency which, in the opinion of the Vice-Chancellor, requires immediate action to be taken, he shall take such action as he deems necessary, and shall at the earliest opportunity, report the action taken to the officer, authority or other body who or which in the ordinary course would have dealt with the matter but nothing in this sub-section shall be deemed to empower the Vice-Chancellor to incur any expenditure not duly authorised and provided for in the budget.

(8) Where any action taken by the Vice-Chancellor under sub-section (5) (a) or (7) affects any person in the service of the University to his disadvantage such person may prefer an appeal to the Executive Council within fifteen days from the date on which the action is communicated to him.

(9) Subject as aforesaid, the Vice-Chancellor shall give effect to the orders of the Executive Council regarding the appointment, suspension and dismissal of officers and teachers of the University.

(10) The Vice-Chancellor shall exercise such other powers as may be prescribed by the Statutes and the Ordinances.]

13. The Treasurer.—²⁸[(1) The Treasurer shall be appointed by the Chancellor in the manner hereinafter appearing—

(a) The Executive Council shall, so far as may be, at least thirty days before the date on which a vacancy is due to occur in the office of Treasurer and also whenever so required by the Chancellor, submit to the Chancellor the name or names of not more than three persons suitable to hold the office of Treasurer.

(b) Where the name or names proposed in the Executive Council for submission to the Chancellor under sub-section (1-a) do not exceed three in number, the Council shall submit all such names, but if the number exceeds three, the Council shall, out of the names so proposed, elect three names according to the system of proportional representation by means of the single transferable vote.

(c) Where one name only has been submitted by the Executive Council the Chancellor shall appoint the person whose name has been so submitted. In other cases the Chancellor shall appoint one of the persons whose names have been submitted by the Executive Council under sub-section (1-b).

²⁸(2) The term of office of the Treasurer shall be six years but he shall notwithstanding the expiry of the term continue in office until a successor has been appointed. He shall receive such remuneration (if any) from the funds of the University as may be prescribed by the Statutes.

²⁸(3) The provisions relating to resignation, conditions of service,

other than emoluments, the filling of temporary vacancies and arrangements for the carrying on of current duties contained in sub-sections (2), (3), (8) and (9) of section 11 shall *mutatis mutandis* apply to the office of Treasurer.

²⁸(4) The Treasurer shall be an *ex-officio* member of the Executive Council and shall manage the property and investments of the University and advise in regard to its financial policy. He shall be responsible for the presentation of the annual estimates (in this Act called the budget) and statement of accounts.

²⁸(5) The Treasurer shall have the duty—

- (i) to ensure that no expenditure not authorized in the budget is incurred by the University (otherwise than by way of investment), and
- (ii) to disallow any expenditure which may contravene the terms of any Statute or Ordinance, or for which provision is required to be made by Statutes or Ordinances but has not been so made.

(6) All contracts shall be signed by the Treasurer on behalf of the University.

(7) He shall exercise such other powers as may be prescribed by the Statutes and the Ordinances.

²⁹[14. The Registrar.—(1) The Registrar shall be a whole-time officer of the University and shall be appointed by the Executive Council on the recommendation of a Selection Committee consisting of the following, namely—

- (i) the Vice-Chancellor ;
- (ii) an educationist nominated by the Chancellor ; and
- (iii) the Chairman of the Public Service Commission, Uttar Pradesh, or a member thereof nominated in this behalf by the Chairman.

(2) The emoluments of the Registrar shall be prescribed by the Ordinances.

(3) The Registrar shall be responsible for the due custody of the records and the Common Seal of the University. He shall be *ex-officio* Secretary of the Court, the Executive Council, the Academic Council, the Finance Committee, the Selection Committees and the Committee of Reference and shall be bound to place before these authorities all such information as may be necessary for the transaction of business. He shall perform such other duties as may be prescribed by the Statutes and the Ordinances or required, from time to time, by the Executive Council or the Vice-Chancellor.

(4) He shall conduct the examinations and make all other arrangements necessary therefor and be responsible for the due execution of all processes connected therewith.

(5) The Registrar shall not be offered nor shall he accept any remuneration for any work in the University save such as may be provided for by the Statutes and the Ordinances.]

28. Subs. by S. 11 of U. P. Act V of 1955.

29. Subs. by S. 12 of *ibid.*

15. Other officers.—The powers of the officers of the University other than the Chancellor, the Vice-Chancellor, the Treasurer and the Registrar shall be prescribed by the Statutes and the Ordinances.

AUTHORITIES OF THE UNIVERSITY

16. Authorities of the University.—The following shall be authorities of the University :—

- I.—The Court,
- II.—The Executive Council,
- III.—The Academic Council,
- IV.—The Committee of Reference,
- V.—[The Boards of Faculties],³⁰
- VI.—[Selection Committees for the appointment of teachers.]³¹ and
- VII.—Such other authorities as may be declared by the Statutes to be authorities of the University.

³²[17. The Court.]—(1) The Court shall consist of the following persons, namely :

Class I--Ex-officio members :

- (i) the Chancellor,
- (ii) the Vice-Chancellor,
- (iii) the Minister for Education in the Government of Uttar Pradesh,
- (iv) the Chief Justice of the High Court of Judicature at Allahabad,
- (v) the Treasurer,
- (vi) the Director of Education,
- (vii) the members of the Executive Council,
- (viii) all Principals of Colleges and Associated Colleges,
- (ix) all Heads of Departments of teaching in the University and all Professors of the University who are not Heads of Departments,
- (x) such other persons with reference to offices held by them as may be prescribed by the Statutes.

Class II—Life members :

- (xi) such persons as may be appointed by the Chancellor to be life members on the ground that they have rendered eminent service to the cause of education provided that their number shall at no time be more than four,
- (xii) all individuals who have made donations of not less than Rs. 20,000 to or for the purposes of the University.

Class III—Other members :

- (xiii) persons to represent such academic and non-academic bodies

30. Subs. by S. 13 of *ibid*.

31. Item VI which was previously omitted by U. P. Act VIII of 1926, has been again inserted by

S. 13 of U. P. Act V of 1955.

32. Subs. by S. 14 of *ibid* U. P. Act V of 1955.

and interests as may be prescribed in this behalf by the Statutes,

- (xiv) persons nominated by associations, individuals or bodies of individuals making to the University donations or annual contributions of an amount to be prescribed by the Statutes,
- (xv) two members of the Legislative Council of the State to be elected by it,
- (xvi) five members of the Legislative Assembly of the State to be elected by it,
- (xvii) Representatives of the registered graduates to be elected according to the system of proportional representation by means of the single transferable vote, by the registered graduates of such standing as may be prescribed by the Statutes from among such registered graduates as are not in the service of the University, a College, an Associated College or a Hostel and whose names have been on the register of graduates for three years or if the Statutes prescribed a longer period for such period,
- (xviii) representatives of donors other than those included in items (xii) and (xiv),
- (xix) representatives of teachers of the University (other than teachers included in Class I), the Wardens, the Delegacy and of such Boards established under Section 27 as may be prescribed by the Statutes,
- (xx) not more than seven persons to be appointed by the Chancellor, one of whom shall be member of the management of an Associated College.

(2) The total number of members including the *ex-officio* but excluding the life members shall not exceed 125.

(3) The number of members who may be in the service of the University, an Associated College, a College or a Hostel shall not exceed the number of the other members.

(4) The number of members referred to in items (xiii) to (xx) of sub-section (1), the manner of their appointment, election and nomination and their tenure shall, save as otherwise provided in this section, be prescribed by the Statutes.

(5) The Court may declare vacant the seat of a member other than an *ex-officio* or life member, who has absented himself from three consecutive meeting of the Court without sufficient cause.]

18. Meeting of the Court.—(1) The Court shall, on a date to be fixed by the Vice-Chancellor, meet once a year at a meeting to be called the annual meeting of the Court.

(2) The Vice-Chancellor may whenever he thinks fit and shall upon a requisition in writing signed by not less than twenty-five members of the Court, convene a special meeting of the Court.

19. Powers and duties of the Court.—(1) The Court shall be the supreme governing body of the University and shall have power to review ^{as} [such acts of the Executive and Academic Councils as are not in

accordance with this Act, the Statutes or the Ordinances] and shall exercise all the powers of the University not otherwise provided for by this Act, the Statutes, the Ordinances and the Regulations.

(2) Subject to the provisions of this Act the Court shall exercise the following powers and perform the following duties, namely :—

- (a) Of making Statutes, and of amending or repealing the same,
- (b) of considering and cancelling Ordinances,
- (c) of considering and passing resolutions on the annual report, the annual accounts and the financial estimates,
- (d) of electing members to serve on the Committee of Reference, and
- ³¹[(e) of considering and passing resolutions on any matter of general policy relating to University education and administration.]

(3) The Court shall exercise such other powers and perform such other duties as may be conferred or imposed upon it by this Act or the Statutes.

³²[20. **The Executive Council.**—(1) The Executive Council shall be the executive body of the University and shall consist of :

- (i) The Vice-Chancellor ;
- (ii) The Treasurer ;
- (iii) All Deans of Faculties ;
- (iv) One Principal of a College or an Associated College, taking office by rotation according to seniority ;
- (v) The Dean of Student Welfare ;
- (vi) One representative of the Wardens and the Delegacy ;
- (vii) Two teachers of the University ;
- (viii) Five persons to be elected according to the system of proportional representation by means of the single transferable vote by the Court from among such members as are not in the service of the University, a College, an Associated College or a Hostel ;
- (ix) Persons less in number by one than the Deans of Faculties to be nominated by the Chancellor.

(2) The manner of selection of the members under items (vi) and (vii) of sub-section (1) shall be prescribed by the Statutes.

(3) The term of office of members other than *ex-officio* members shall be three years.]

³³[21. **Powers and duties of the Executive Council.**—(1) Subject to the provisions of this Act and the Statutes, the Executive Council shall have the following powers and duties, namely—

- (a) to hold and control the property and funds of the University and issue any general directives in that behalf ;

34. Inserted by S. 15 of U. P. Act V of 1965.

35. Sub. by S. 16 of *ibid.*

36. Subs. by S. 17 by *ibid.*

- (b) to accept the transfer of any movable or immovable property on behalf of the University;
- (c) to administer any funds placed at the disposal of the University for specific purposes;
- (d) to prepare the budget of the University;
- (e) to award fellowships, scholarships, bursaries, medals and other rewards in accordance with the Statutes and Ordinances;
- (f) to appoint the officers, teachers and other servants of the University, to define their duties and the conditions of their service and to provide for the filling of casual vacancies in their posts;
- (g) to appoint examiners and to direct the holding of examinations and publication of results;
- (h) to arrange for and direct the inspection of Associated Colleges, Colleges, Hostels and other places of residence of students;
- (i) to direct the form and use of the Common Seal of the University;
- (j) to regulate and determine all matters concerning the University in accordance with this Act, the Statutes and the Ordinances, and to exercise such other powers as may be conferred or imposed on it by this Act and the Statutes.

(2) The Executive Council shall appoint a committee (hereinafter called the Finance Committee) consisting of the Treasurer and four other persons from amongst its members out of whom not more than two shall be persons in the service of the University, to advise the Executive Council on matters relating to the administration of the property and Funds of the University. The Treasurer shall be the Chairman of the Finance Committee.

(3) The Executive Council shall not exceed the limits of recurring and non-recurring expenditure to be incurred in each financial year as determined by the Committee of Reference.

(4) The Executive Council shall not take any action in regard to the number, qualifications and emoluments of teachers and the fees payable to examiners except after considering the advice of the Academic Council and the Faculties concerned.

(5) The Executive Council shall give due consideration to the resolutions of the Court and take such action thereon as it shall deem fit and report it to the Court. Where, in any case, the Executive Council is unable to take action in accordance with any resolution it shall inform the Court of its reasons therefor.

(6) The Executive Council may subject to conditions to be laid down in the Statutes delegate such of its powers as it deems fit to an officer or authority of the University.]

22. The Academic Council.—³⁷[1] The Academic Council shall be the academic body of the University, and shall, subject to the provisions of this Act, the Statutes and the Ordinances, have the control and general regulation, and be responsible for the maintenance of standards

37. The original Section renumbered as sub-section (1) and a proviso

and sub-section (2), added by S. 18 of U. P. Act V of 1955.

of teaching and examination within the University, and shall exercise such other powers and perform such other duties as may be conferred or imposed upon it by the Statutes. It shall have the right to advise the Executive Council on all academic matters. The constitution of the Academic Council and the term of office of its members, other than *ex-officio* members, shall be prescribed by the Statutes :

[Provided that the number of members of the Academic Council shall not exceed fifty.]³⁷

[Standing Committee of the Academic Council.—(2) [There shall be a Standing Committee of the Academic Council. The constitution, powers and functions of the Committee shall be prescribed by the Statutes.]³⁸

³⁸[23. The Committee of Reference.—(1) The Committee of Reference shall consist of—

(i) the Vice-Chancellor ;

(ii) the Treasurer ;

(iii) three members of the Court, not being members of the Executive Council, to be elected according to the system of proportional representation by means of the single transferable vote, of whom one shall be a teacher of the University and the other two shall be persons not in the service of the University, a College, an Associated College or a Hostel ;

(iv) two persons to be nominated by the State Government.

(2) The Vice-Chancellor shall be the Chairman and the Registrar shall be the Secretary of the Committee.

(3) The Committee of Reference shall, having regard to the income and resources of the University, fix limits for the total recurring and total non-recurring expenditure for the ensuing year, and shall perform such other functions as may be prescribed by this Act or the Statutes.

(4) The Committee of Reference may, for any special reason, revise, during the financial year, the limits of expenditure fixed by it under sub-section (3).]

³⁹[24. The Faculties.—(1) The University shall include such Faculties as may be prescribed by the Statutes.

(2) Each Faculty shall comprise such Departments of teaching as may be prescribed by the Statutes. Subjects of study shall be assigned to various Departments by the Ordinances.

(3) There shall be a Board of each Faculty the constitution and powers of which shall be prescribed by the Statutes.

(4) There shall be a Dean of each Faculty who shall be the Head of a Department of teaching in the Faculty chosen with due regard to seniority in such manner and for such period as may be prescribed by the Statutes.

(5) The Dean shall be the Chairman of the Board of the Faculty and be responsible for the due observance of the Statutes, Ordinances

37. Subs. by S. 15 of U. P. Act V of 1955.

1955.
39. Subs. by S. 20 of *ibid.*

38. Subs. by S. 19 of U. P. Act V of

and Regulations relating to the Faculty. He shall be further responsible for the organization and conduct of the teaching and research work of the Departments comprised in the Faculty.

(6) There shall be a Head in each Department of teaching who shall be responsible to the Dean for the organization of the teaching in the Department. The senior most Professor of a Department shall be the Head of the Department, and where there is no Professor in a Department the senior most Reader thereof shall be the Head.

(7) The duties, powers and functions of the Heads of Departments shall be prescribed by the Ordinances.

(8) There shall be established Committee of Courses and Studies each in respect of one or more subjects of study. The constitution of the Committees shall be prescribed by the Ordinances.]

25. Other authorities of the University. The constitution of * * *⁴⁰ such other authorities as may be declared by the Statutes to be authorities of the University shall be provided for in the manner prescribed by the Statutes.

26. * * *⁴¹.

UNIVERSITY BOARDS

27. University Boards. (1) The University shall establish [such]⁴² Boards as may be prescribed by the Statutes.

(2) The constitution, powers and duties of the Boards shall be prescribed by the Statutes.

28. Manner of appointment of officers and members of Authorities. —(1) Save where expressly provided to the contrary, officers and members of the authorities of the University shall, as far as may be, be chosen by methods other than election.

(2) Where provision is made in this Act for an election, such election shall be conducted according to the system of proportional representation by means of the single transferable vote, and where such provision is made in a Statute, it shall be held in the manner prescribed by the Statutes.

(3) Where provision is made in this Act or the Statutes for any appointment by rotation or according to seniority or other qualification, the manner of rotation and determination of seniority and other qualification shall be prescribed by the Statutes.]

TEACHERS

29. Teachers. —(1) Subject to the provisions of this Act, and except as provided in sub-section (3), the teachers of the University and the Associated Colleges shall be appointed by the Executive Council or the Management of the Associated College, as the case may be, on the recommendation of the Selection Committee in such manner as may be prescribed by the Statutes.

40. The words "the Council of Associated Colleges and of" rep. by S. 42 and Sch. II of the Agra University Act, 1926 (U. P. Act of 1926).

41. S. 28 re. powers of the Council of Associated Colleges rep. by *ibid.*

42. Subs. for the words "a Residence,

Health and Discipline Board, a Muslim Advisory Board and such other" by S. 21 of U. P. Act V of 1955.

43. This section which was previously repealed by U. P. Act VIII of 1926, has been again inserted by S. 22 of U. P. Act V of 1955.

44. Subs. by S. 23 of *ibid.*

(2) Every teacher appointed under sub-section (1) shall, in the first instance, be on probation for such period as may be prescribed by the Statutes and he shall not be confirmed;

- (a) if he is a teacher of the University, except by the order of the Executive Council after considering the reports of the Vice-Chancellor and the Head of the Department and the Dean concerned, and
- (b) if he is a teacher of an Associated College, except by the order of the Management after considering the reports of the senior teacher of the subject and the Principal of the College.

(3) The Executive Council or the Management, as the case may be may make officiating appointments in a vacancy caused by the grant of leave to an incumbent for a period not exceeding ten months without reference to the Selection Committee but shall not fill any other vacancy or post likely to last for more than six months without such reference.

(4) Principals and teachers other than teachers referred to in sub-section (1) shall be appointed by the authorities and in the manner to be prescribed by the Statutes.

(5) There shall be a Selection Committee for appointment of teachers in each subject of study. The constitution, powers and functions of the Selection Committees and the procedure to be followed in making appointments shall be prescribed by the Statutes.]

STATUTES, ORDINANCES AND REGULATIONS

*[30. **Statutes.**—(1) Subject to the provisions of this Act, the Statutes may provide for any matter relating to the University and shall, in particular, provide for the following—

- (a) the constitution, powers and duties of the authorities and Boards of the University ;
- (b) the election, appointment and continuance in office of the members of the said authorities and Boards of the University and the filling of vacancies and all other matters relating to those authorities and Boards for which it may be necessary or desirable to provide ;
- (c) the institution and maintenance of colleges and hostels ;
- (d) the designation, manner of recruitment, powers and duties of the officers of the University ;
- (e) the classification and the manner of recruitment of teachers ;
- (f) the constitution of a provident fund and the establishment of an insurance scheme for the benefit of officers, teachers and other employees of the University ;
- (g) the institution of degrees and diplomas ;
- (h) the conferment of honorary degrees ;
- (i) the withdrawal of degrees, diplomas and other academic distinctions ;
- (j) the conditions on which an institution may be granted recognition as an Associated College and be liable to the withdrawal of such recognition ;

45. Subs. by S. 24 of *ibid.*

- (k) the establishment, combination, sub-division and abolition of Faculties ;
- (l) the establishment of departments of teaching in the Faculties ;
- (m) the maintenance of a Register of Registered Graduates ;
- (n) the holding of Convocation ;
- (o) the institution of fellowships, scholarships, bursaries, medals and prizes ; and
- (p) all other matters which are required by this Act to be provided for by the Statutes.]

31. Statutes how made.—(1) The first Statutes shall be those set out in Schedule I.

(2) The Statutes may be amended or repealed or added to by Statutes made by the Court in the manner hereinafter appearing.

(3) The Court may of its own motion take into consideration the draft of any Statute :

Provided that in any such case before a Statute is passed affecting the powers or duties of any officer or authority or board the opinion of the Executive Council and a report from the person or body concerned shall have been taken into consideration by the Court.

(4) The Executive Council may propose to the Court the draft of any Statute to be passed by the Court. Such draft shall be considered by the Court at its next succeeding meeting. The Court may approve such draft and pass the Statute, or may reject it or return it to the Executive Council for re-consideration, either in whole or in part together with any amendments which the Court may suggest. After any draft so returned has been further considered by the Executive Council, together with any amendments suggested by the Court [* * * * *]⁴⁷ it shall be again presented to the Court with the report of the Executive Council thereon, and the Court may then deal with the draft in any way it thinks fit.

(5) Where any Statute has been passed by the Court or a draft of a Statute has been rejected by the Court, it shall be submitted to the Chancellor who may refer the Statute or draft back to the Court for further consideration or, in the case of a Statute passed by the Court, assent thereto or withhold his assent. A Statute passed by the Court shall have no validity until it has been assented to by the Chancellor.

(6) The Executive Council shall not propose the draft of any Statute or of any amendment of a Statute,

(a) affecting the status, powers or constitution of any authority of the University until such authority has been given an opportunity of expressing an opinion upon the proposal. Any opinion so expressed shall be in writing and shall be considered by the Court, and shall be submitted to the Chancellor.

(b) * * *48

47. The words "returned thereto" | omitted by S. 25 of U. P. Act V of 1955.

by S. 42 and Sch. II of the Agra University Act, 1926 (U. P. Act VIII of 1926).

48. Cl. (b) re-Associated Colleges rep. |

[32. Ordinances.]—(1) Subject to the provisions of this Act and the Statutes, the Ordinances may provide for any matter permitted by this Act or the Statutes to be provided for by Ordinances and for any other matter which the Executive Council considers it advisable to provide for by Ordinances.

(2) Without prejudice to the generality of the power conferred by sub-section (1), the Ordinances shall provide for the following matters, namely—

- (a) the admission of students to the University and their enrolment and continuance as such ;
- (b) the courses of study to be laid down for all degrees and diplomas of the University ;
- (c) the conditions under which students shall be admitted to the degree, diploma or other courses and to the examinations of the University, and shall be eligible for the award of degrees and diplomas ;
- (d) the conditions of residence of the students of the University and the levying of fees for residence in Colleges and Hostels maintained by the University ;
- (e) the recognition of Colleges and Hostels not maintained by the University ;
- (f) the number, qualifications, emoluments and other conditions of service (including the age of retirement) of teachers and salaried officers of the University and the preparation and maintenance of a record of their service and activities ;
- (g) the fees which may be charged by the University for any purpose ;
- (h) the conditions subject to which persons may be recognised as qualified to give instruction in Colleges and Hostels ;
- (i) the conditions and mode of appointment and the duties of examining bodies, examiners and moderators ;
- (j) the conduct of examination ;
- (k) the remuneration and allowances, including travelling and daily allowances, to be paid to persons employed on the business of the University ;
- (l) the condition of the award of fellowships, scholarships, studentships, bursaries, medals and prizes ;
- (m) all other matters which by this Act or by the Statutes are required to be or may be provided for by the Ordinances.]

33. Ordinances how made.—(1) Save as otherwise provided in this section Ordinances shall be made by the Executive Council :

Provided that no Ordinance shall be made—

- (a) affecting the admission of students, or prescribing examinations to be recognized as equivalent to the University examinations or the further qualifications mentioned in sub-section (1) of Section [37]⁶⁰ for admission to the

degree courses of the University, unless a draft of the same has been proposed by the Academic Council, or

(b) affecting the conditions and mode of appointment and duties of examiners and the conduct or standard of examinations or any course of study, except in accordance with a proposal of the Faculty or Faculties concerned and unless a draft of such Ordinance has been proposed by the Academic Council in the manner prescribed by the Statutes, or

(c) * * *⁵¹.

(d) affecting the conditions of residence of students, except after compliance with such conditions as may be prescribed by the Statutes.

⁵²[(e) affecting the income or expenditure of the University unless a draft of such Ordinance has been submitted to the State Government and the State Government does not object].

(2) The Executive Council shall not have power to amend any draft proposed by the Academic Council under sub-section (1) but may reject it or return it to the Academic Council for reconsideration, either in whole or in part, together with any amendments which the Executive Council may suggest.

(3) All Ordinances made by the Executive Council shall have effect from such date as it may direct, but every Ordinance so made shall be submitted, as soon as may be, to the Chancellor and the Court, and shall be considered by the Court at its next succeeding meeting. The Court shall have power by a resolution passed by a majority of not less than two thirds of the members present at such meeting to cancel any such Ordinance and such Ordinance shall, from the date of such resolution, be void.

(4) The Chancellor may, at any time after any Ordinance has been considered by the Court, signify to the Court and the Executive Council his disallowance of such Ordinance, and from the date of receipt by the Executive Council of intimation of such disallowance such Ordinance shall become void.

(5) The Chancellor may direct that the operation of any Ordinance shall be suspended until he has had an opportunity of exercising his power of disallowance. An order of suspension under this sub-section shall cease to have effect on the expiration of one month from the date of such order, or on the expiration of fifteen days from the date of consideration of the Ordinance by the Court, whichever period expires later.

(6) Where the Executive Council has rejected the draft of an Ordinance proposed by the Academic Council, the Academic Council may appeal to the Court which after obtaining the views of the Executive Council, may, if it approves the draft, make the Ordinance and submit it to the Chancellor.

51. Proviso re-Associated Colleges
rep. by S. 42 and Sch. II of the
Agra University Act, 1926 (U.P.)

Act VIII of 1926).
52. Added by S. 27 of U.P. Act V of
1955.

34. Regulations.—The authorities and the Boards of the University may make regulations consistent with this Act, the Statutes and the Ordinances—

- (a) laying down the procedure to be observed at their meetings and the number of members required to form a quorum;
- (b) providing for all matters which by this Act, the Statutes or the Ordinances are to be prescribed by the Regulations; and
- (c) providing for all other matter solely concerning such authorities and Boards and not provided for by this Act, the Statutes and the Ordinances.

(2) Every authority of the University shall make Regulations providing for the giving of notice to the members of such authority of the dates of meetings and of the business to be considered of meetings and for the keeping of a record of the proceedings of meetings.

(3) The Executive Council may direct the amendment, in such manner as it may specify, of any Regulations made under this section or the annulment of any Regulation made under sub-section (1) [by any authority of the University other than the Court]⁵³:

Provided that any authority or Board of the University which is dissatisfied with any such direction may appeal to the Chancellor, who, after obtaining the views of the Executive Council, may pass such orders as he thinks fit.

⁵⁴[(4) The Academic Council may, subject to the provisions of the Ordinances, make Regulations providing for courses of study for the various examinations and degrees of the University after receiving drafts of the same from the Board of the Faculty concerned.

The Academic Council may not alter a draft received from the Board of Faculty but may reject the draft received or return it to the Board of Faculty for further consideration together with its own suggestions.]

RESIDENCES : COLLEGES AND HOSTELS

35. Residences.—Every student of the University shall reside in a College or Hostel, or under such conditions as may be prescribed by the Statutes and the Ordinances.

36. Colleges and Hostels.—(1) Colleges and Hostels maintained by the University shall be such as may be named by the Statutes.

(2) Colleges and Hostels other than those maintained by the University shall be such as may be recognized by the Executive Council on such general or special conditions as may be prescribed by the Ordinances.

(3) The condition of residence in Colleges and Hostels shall be prescribed by the Ordinances ; and every College or Hostel shall be subject to inspection by [such persons as may be authorised in that behalf by the Statutes or the Executive Council]⁵⁵.

(4) The Executive Council shall have power to suspend or withdraw the recognition of any College or Hostel which is not conducted in accordance with the conditions prescribed by the Ordinances :

53. Added by S. 28 of *ibid.*

55. Subs. by S. 30 of *ibid.*

54. Added by S. 29 of *ibid.*

Provided that no such action shall be taken without affording the [*****]⁵⁸ Management of such College or Hostel an opportunity of making such representation as it may deem fit.

[36-A. Associated Colleges.]—(1) Associated Colleges shall be such as may be named by the Statutes and shall not exceed four in number.

(2) It shall be lawful for an Associated College to make arrangements with any other Associated College or Colleges or with the University for co-operation in the work of teaching.

(3) The conditions of recognition of an Associated College shall be such as may be prescribed by the Statutes or imposed by the Executive Council but no Associated College shall be authorised to impart instruction for post-graduate degrees.

(4) Except as provided by this Act, the Management of an Associated College shall be free to manage and control the affairs of the College and be responsible for its maintenance and upkeep. The Principal of every such College shall be responsible for the due maintenance of discipline in it.

(5) An Associated College shall be inspected at intervals of not more than three years in the manner prescribed by the Statutes and a report of the inspection shall be made to the Executive Council.

(6) The recognition of an Associated College may, with the previous sanction of the Chancellor, be withdrawn by the Executive Council if it is satisfied, after considering any explanation furnished by the Management, that it has ceased to fulfil the conditions of its recognition or that it persists in making default in the performance of its duties under this Act or in the removal of any defects in its work pointed out by the Executive Council.]

[36-B. The Delegacy.]—There shall be a Delegacy to supervise the arrangements relating to the residence, health and welfare of students of the University not residing in or under the care of any College or Hostel. The constitution, powers and duties of the Delegacy shall be prescribed by the Statutes.]

ADMISSION AND EXAMINATIONS

37. Admission to University Courses.—1) Students shall not be eligible for admission to a course of study for a degree unless they have passed the Intermediate examination of the Board of High School and Intermediate Education of the United Provinces or of an Indian University incorporated by any law for the time being in force, or an examination recognized by the University as equivalent thereto, and possess such further qualifications (if any as may be prescribed by the Ordinances).

(2) [Omitted]⁵⁹.

(3) [Omitted]⁶⁰.

[4] Any student whose work is unsatisfactory may be removed

56. The words "Committee of" omitted by *ibid.*

57. Added by S. 31 of U. P. Act V of 1955.

58. Added by *ibid.*

59. Sub-sections (2) and (3) omitted by S. 32 of *ibid.*

60. Added by *ibid.*

from the University or an Associated College in accordance with the provisions of the Ordinances.]

⁶⁰[(5) The University shall not, save with the previous sanction of the Chancellor, recognise for the purpose of admission to a course of study for a degree, any degree conferred by any other University or as equivalent to the Intermediate Examination of the Board of High School and Intermediate Education, Uttar Pradesh, any examination conducted by any other authority.]

38. Examinations.—(1) Subject to the provisions of the Statutes, all arrangements for the conduct of examinations shall be made, and all examiners shall be appointed by the Executive Council [in the manner prescribed by the Statutes] ⁶¹.

(2) If during the course of examination any examiner is for any cause incapable of acting as such, the Vice-Chancellor shall appoint an examiner to fill the vacancy.

⁶²[(3) At least one person not employed in the University, an Associated College or a College shall be appointed examiner for each subject prescribed for a degree.]

⁶³[(4) The Board of each Faculty shall appoint an Examination Committee for every subject assigned to the Faculty. The Committee shall consist of such persons as the Board may, subject to the approval of the Academic Council, appoint from among its own members or from outside. The Committee shall have power to moderate question papers set for examinations, review the quality of the work submitted by candidates for examination, report on the standard of attainment and make recommendations in regard to any of these matters. Any review, report or recommendation made by the Committee shall be laid before the Academic Council for its consideration.]

⁶⁴[(5) Every person appointed as examiner shall, as a condition of appointment, agree that he will not undertake examination work in excess of the limits laid down in the Ordinances.]

ANNUAL REPORT AND ACCOUNTS

39. Annual Report.—The annual report of the University shall be prepared under the direction of the Executive Council and shall be submitted to the Court on or before such date as may be prescribed by the Statutes, and shall be considered by the Court at its annual meeting. The Court may pass resolutions thereon and communicate the same to the Executive Council [* * * * *] ⁶⁵.

⁶⁶[40. Annual accounts.—(1) The annual accounts and balance sheet of the University shall be prepared under the directions of the Executive Council, and all moneys accruing to or received by the University from whatever source and all amounts disbursed or paid shall be entered in the accounts.]

⁶⁷[(1-A) A copy of the accounts and the balance sheet shall be sub-

60. *Added by U. P. Act V of 1955.*

61. *Added by S. 33 of U. P. Act V of 1955.*

62. *Subs. by ibid.*

63. *Subs. by ibid.*

64. *Added by ibid.*

65. The words "which shall take such action as it thinks fit and the Executive Council shall inform

the Court of the action taken by it and, where no action is taken, of its reasons therefor" were omitted by S. 34 of U. P. Act V of 1955.

66. *Subs. by S. 35 of U. P. Act V of 1955.*

67. *Added by ibid.*

mitted to the State Government which shall cause an audit to be carried out by auditors of high standing]

⁶⁸[(2) The accounts when audited shall be printed and copies thereof shall together with copies of the audit report be submitted by the Executive Council to the Court and the State Government]

⁶⁹[(2-A) It shall be lawful for the State Government to require any person who is found to have spent or authorised the expenditure of funds in excess of the amounts provided in the budget or in violation of any provision of this Act, the Statutes or the Ordinances, to reimburse the amount so spent and the State Government may take all such steps as may be deemed necessary :

Provided that the State Government shall before requiring any person as aforesaid give him a reasonable opportunity of making a representation.]

(3) The Executive Council shall also prepare before such date as may be prescribed by the Statutes, the financial estimates for the ensuing year.

(4) Every item of new expenditure of or above such amount as may be prescribed by the Statutes, which it is proposed to include in the financial estimates, shall be referred by the Executive Council to the Committee of Reference which may make recommendations thereon.

(5) The Executive Council shall, after considering the recommendations (if any) of the Committee of Reference, submit the financial estimates as finally approved by it to the Court with such recommendations.

(6) The annual accounts and the financial estimates shall be considered by the Court at its annual meeting, and the Court may pass resolutions with reference thereto and communicate the same to the Executive Council * * * * *⁷⁰:

Provided that where there has been a disagreement between the Executive Council and the Committee of Reference upon any item of expenditure referred to it under sub-section (5), the decision of the Court thereon shall be final.

⁷¹[(7) Except in so far as such expenditure is incurred out of funds accruing under clause (c) of sub-section (1) of Section 21, it shall not be lawful for the Vice-Chancellor of the Executive Council to incur any expenditure not sanctioned in the Budget.]

SUPPLEMENTARY PROVISIONS

41. Removal from membership of the University.—The Court may, on the recommendation of not less than two-thirds of the members of the Executive Council for the time being in India, remove the name of any person from the register of graduates and remove any person from membership of any authority or Board of the University on conviction by a court-of-law of what, in the opinion of the Court, is a serious offence involving moral delinquency, or if he has been guilty of scandalous conduct, and for the same reasons may withdraw any degree or diploma conferred or granted by the University.

68. Subs. by *ibid.*

69. Added by *ibid.*

70. The words "which shall take them into consideration, and take such action thereon as it thinks fit, or

inform the court, when no action is taken of its reasons therefor" omitted by S. 35 of U. P. Act V of 1955.

71. Inserted by *ibid.*

42. Disputes as to constitution of University authorities or bodies.—If any question arises whether any person has been duly elected or appointed as, or is entitled to be a member of any authority or other body of the University, [or whether any decision of the University or any authority thereof is in conformity with this Act, the Statutes and the Ordinances]⁷² the matter shall be referred to the Chancellor whose decision thereon shall be final.

43. Constitution of committees.—Where any authority of the University is given power by this Act or by the Statutes to appoint committees, such committees shall, unless there is some special provision to the contrary, consist of members of the authority concerned and of such other persons (if any) as the authority in each case may think fit.

44. Filling of Casual vacancies.—⁷³[1] All casual vacancies among the members (other than *ex-officio* members) of any authority or other body of the University shall be filled as soon as conveniently may be by the person or body who appointed, elected or co-opted the member whose place has become vacant, and the person appointed, elected or co-opted to a casual vacancy shall be a member of such authority or body for the residue of the term for which the person whose place he fills would have been a member.

⁷³[2] A person who is a member of an authority of the University as a representative of another body, whether of the University or outside, shall retain his seat on the University authority so long as he continues to be member of the body by which he was appointed or elected and thereafter till his successor is duly appointed.]

45. Proceedings of University and bodies not invalidated by vacancies.—No act or proceeding of any authority or other body of the University shall be invalidated merely by reason of the existence of a vacancy or vacancies among its members [or by reason of some person having taken part in the proceedings who is subsequently found not to have been entitled to do so.]⁷⁴

46. Conditions of service.—(1) Every salaried officer and teacher of the University shall be appointed on a written contract.

The contract shall be lodged with the Registrar of the University, and a copy thereof shall be furnished to the officer or teacher concerned.

(2) Any member of the public services in India whom it is proposed to appoint to a post in the University shall, subject to the approval of such appointment by this Government [concerned]⁷⁵, have the option—

(i) of having his services lent to the University for a specified period and remaining liable to recall to Government service at the [option of the Government concerned]^{76a} at the end of that period, or

(ii) of resigning Government service on entering the service of the University.

72. Inserted by S. 36 of U. P. Act V of 1955.

73. The original section renumbered as sub-section (1) and a new sub-section (2) added by S. 37 of *ibid.*

74. Inserted by S. 38 of *ibid.*

75. Ins. by A. O.

76a. Subs. for "discretion of Government" by A. O.

47. Tribunal of Arbitration.—Any dispute arising out of a contract between the University and any officer or teacher of the University shall on the request of the officer or teacher concerned, be referred to a Tribunal of Arbitration consisting of one member appointed by the Executive Council, one member nominated by the officer or teacher concerned, and an umpire appointed by the Chancellor. The decision of the Tribunal shall be final, and no suit shall lie in any Civil Court in respect of the matters decided by the Tribunal. Every such request shall be deemed to be a submission to arbitration upon the terms of this section within the meaning of the [Indian Arbitration Act, 1940 (Act X, 1940)]⁷⁸ and all the provisions of that Act, with the exception of Section 2 thereof, shall apply accordingly.

48. Pension or Provident Fund—(1) The University shall constitute for the benefit of its officers, teachers and other servants such pension or provident funds as it may deem fit in such manner and subject to such conditions as may be prescribed by the Statutes.

(2) Where such pension or provident fund has been so constituted, the [Provincial Government]⁷⁷ may declare⁷⁸ that the provisions of the Provident Fund Act, 1897⁷⁹, shall apply to such fund as if it were a Government Provident Fund.

49. Territorial exercise of power.—Save as otherwise provided in this Act, the powers of the University conferred by or under this Act shall not extend beyond a radius of ten miles from the Convocation Hall of the University. Notwithstanding anything in any other law for the time being in force, no educational institution beyond that limit shall be admitted to any privileges of the University, and no educational institution within that limit shall, save with the sanction of the Chancellor, be associated in any way with or seek admission to any privileges of any other University incorporated by law in [a Part A State or a Part C State]⁸⁰, and any such privileges granted by any such other University to any educational institution within that limit prior to the commencement of this Act shall be deemed to be withdrawn on the commencement of this Act:

* * *⁸¹

TRANSITORY PROVISIONS

50. Completion of course for students in Colleges affiliated to the Allahabad University under previous Act.—Notwithstanding anything contained in this Act or the Ordinances any student of a College affiliated to the Allahabad University, established under the Allahabad University Act, 1887⁸², who was studying for any examination of the said University shall be permitted to complete his course in preparation therefor, and the University shall provide for such students instruction and examinations in accordance with the Prospectus of Studies of that University.

76. *Subs.* by S. 39 of *ibid.*

77. *Subs.* by "G. G. in C." by A. O.

78. The provisions of the Provident Funds Act, 1925 (Act XIX of 1925) applied to the Provident (Permanent Appointment) Fund contributed by the University—see Not. No. 1169 d. May 9, 1928 in Gaz., 1928, Part I, p. 497.

79. See now the Provident Funds Act, 1925 (Act XIX of 1925) in U. C. A. Vol. VIII, p. 161.

80. *Subs.* for the words "British India" by A. O. 1850.

81. The proviso was rep. by S. 42 and Sch. II of the Agra University Act, 1926 (U.P. Act VII I of 1926).

82. *Rep.*

51. Appointment of first Vice-Chancellor.—The first Vice-Chancellor may be appointed at any time after the passing of this Act. Such appointment shall, notwithstanding anything contained in sub-section (1) of Section 11, be made by the Chancellor for a period of not more than three years on such conditions as he thinks fit:

Provided that no such appointment shall be made until financial provision has been made therefor.

52. Withdrawal of control of existing University over schools.—At any time after the passing of this Act, if the [provincial Government]⁸³ is satisfied that adequate arrangements have been made to replace the present system of examinations for admission to the University of Allahabad, as constituted prior to the commencement of this Act, and to its colleges, it may, by notification in the [Official Gazette]⁸⁴, direct that the said University shall cease to exercise any control over the recognition of schools, and as from such date clause (o) of sub-section (2) of Section 25 of the Indian Universities Act, 1904, shall, so far as it relates to the said University, be repealed.

53. First appointments of University staff.—(1) At any time after the passing of this Act and until such time as the authorities of the University shall have been duly constituted :—

- (a) the treasurer may be appointed by the Chancellor ;
- (b) any other officers of the University may be appointed by the Vice-Chancellor with the previous sanction of the Chancellor ;
- (c) teachers of the University shall be appointed by the Chancellor after considering the recommendations of an Advisory Committee consisting of the Vice-Chancellor, the Director of Public Instruction, United Provinces, and such other person or persons, if any, as the Chancellor thinks fit to associate with them.

(2) Any appointment made under sub-section (1) shall be for such period not exceeding three years and on such conditions as the appointing authority thinks fit :

Provided that no such appointment shall be made until financial provision has been made therefor.

54. General powers of the Vice-Chancellor.—The Vice-Chancellor appointed under Section [51]⁸⁵ shall, until Sections 3 and 4 are brought into operation, have power—

- (a) with the previous approval of the Chancellor to make additional Statutes to provide for any matter not provided for by the first Statutes ;
- (b) to constitute provisional authorities and bodies, and on their recommendations make rules providing for the conduct of the work of the University ;
- (c) subject to the control of the [Provincial Government]⁸⁶ to make such financial arrangements as may be necessary to enable this Act or any part thereof to be brought into operation ;

83. Subs. for L. G. by A. O.

84. Subs. for "Gazette" by *ibid.*

85. Subs. for "50" by S. 5 of the U. P.

Act VIII of 1922.

86. Subs. for "L. G." by A. O.

- (d) with the sanction of the Chancellor, to make such appointments as may be necessary to enable this Act or any part thereof to be brought into operation;
- (e) to appoint committees, as he may think fit, to discharge such of his functions as he may direct; and
- (f) generally to exercise all or any of the powers conferred on the Executive Council by this Act or the Statutes.

55. Repeal of certain enactments.—As from the date on which Sections 3 and 4 are brought into operation, the enactments specified in Schedule II shall be repealed to the extent specified in the fourth column thereof.

TRANSITORY PROVISIONS

[As provided by the following sections of U. P. Act V of 1955].

“40. Notwithstanding anything in the Principal Act, the Statutes or the Ordinances, the term of every elected officer or authority of the University, holding office or constituted on the date immediately preceding the commencement of the Allahabad University (Amendment) Act, 1954, hereinafter called the “Amending Act” shall determine on the appointment, election or constitution of the corresponding officer or authority in accordance with the provisions of the Principal Act as amended by the said Act.

41. Notwithstanding anything in the Principal Act, or the Amending Act, the Chancellor may at any time after the Amending Act has come into force appoint a person to be Vice-Chancellor and it shall not be necessary for making the appointment to follow the procedure laid down in Section 11. The Vice-Chancellor so appointed shall exercise all the powers and perform all the duties and functions of the Vice-Chancellor under the Principal Act, as amended, and shall hold office for a period of one year, but the Chancellor may, if it becomes necessary, extend the period by one year.

42.—(1) At any time after this Act has been first published in the official *Gazette*, it shall be lawful for the State Government to do anything necessary generally for giving effect to the provisions of the Principal Act as amended by this Act including the constitution of the University authorities, the making of any new Statute or the amending of any Statute and fixing of dates for the coming into force of such Statutes or amendments.

(2) Every Statute and amendment made under sub-section (1) shall have the same force and effect as a Statute or amendment made under and in accordance with Section 31 of the Principal Act.

(3) The powers conferred by sub-section (1) may be exercised as often as occasion requires but not later than eighteen months from the time this Act is first published in the official *Gazette*.

43.—(1) The State Government may, for the purpose of removing any difficulties, particularly in relation to the transition from the provisions of Principal Act, to the provisions of the Act, as amended by the Amending Act, by order published in the official *Gazette*,

- (a) direct that the Principal Act, amended as aforesaid, shall during such period as may be specified in the order take effect subject to such adaptations, whether by way of

modification, addition or omission, as it may deem to be necessary or expedient ; or

- (b) direct that till such time, not exceeding one year from the commencement of the Amending Act, as the University authorities are constituted or appointed under and in accordance with the Principal Act, amended as aforesaid, the powers, duties and functions, exercisable or dischargeable by such University authorities shall be exercised and discharged by the corresponding authorities established on the date immediately before the commencement of the Amending Act ; or
- (c) direct that any Statute, Ordinance or Regulation in force at the date immediately preceding the coming into force of the Amending Act shall continue in force subject to such alteration, modification, addition or omission, as it may deem to be necessary or expedient until superseded by anything done or any action taken under the Principal Act, as amended by the Amending Act ; or
- (d) make such other temporary provision for the purpose of removing any such difficulty, as it may deem to be necessary or expedient :

Provided that no such order shall be made after twelve months from the date of the commencement of the Amending Act.

(2) No order made under sub-section (1) shall be questioned in any Court of law on the ground that no difficulty as is referred to in the said sub-section existed or was required to be removed".

Note :—Please see Allahabad University (Removal of Difficulties) Order, 1955 published in U. P. Gazette dated 23rd April, 1955, Pt. I.-A. p. 252.

SCHEDULE I

THE FIRST STATUTES OF THE UNIVERSITY

SCHEDULE II

ENACTMENTS REPEALED

(See Section 55)

Year	Number	Short title	Extent of repeal
1887	XVIII	The Allahabad University Act, 1887.	So much as is unrepealed.
1940	VIII	The Indian Universities Act, 1904.	In sub-section (2) of Section 6 the word "Allahabad" and proviso. In the first Schedule the heading "The University of Allahabad" and the entries under that heading.

THE ALMORA HONORARY ASSISTANT COLLECTOR'S DECREES AND ORDERS VALIDATING ACT, 1938

(U. P. ACT NO. XI OF 1938)

CONTENTS

- | | |
|------------------------|--------------------------------------|
| 1. Preamble. | 2. Validation of decrees and orders. |
| 1. Short title. | |

[Received the assent of the Governor on September 16, 1938, and was published under Section 75 of the Government of India Act, 1935, on September 24, 1938, U. P. Gaz., 1938, Pt. VII, pp. 75-76.]

An Act to validate certain decrees and orders passed by Lala Thakur Das Sah, Honorary Assistant Collector, Almora.

Preamble.—Whereas it is expedient to validate certain decrees and orders passed by Lala Thakur Das Sah, Honorary Assistant Collector of the 2nd Class, Almora, between July 12, 1932 and July 4, 1935, in ignorance of the change in his jurisdiction.

It is hereby enacted as follows :

Prefatory Note:—For S. O. R., see Gaz., 1938, Pt. VII, p. 627; for discussion, see L. A. Pro., d. Aug. 2, 1938, in Vol. VII, p. 131, and L. C. Pro. d. Aug. 20 and Sep. 2, 1938, in Vol. III, pp. 895 and 1201-1202, respectively.

1. **Short title.**—The Act shall be called the Almora Honorary Assistant Collector's Decrees and Orders Validating Act, 1938.

2. **Validation of decrees and orders.**—Notwithstanding anything contained in Government notification No. 737/V(I-421), dated July 12, 1932, all decrees and orders passed by Lala Thakur Das Sah, Honorary Assistant Collector, 2nd Class of Almora, between the 12th day of July, 1932 and July 4, 1935 in original Civil Suits of a nature not cognizable by a Court of Small Causes under the Provincial Small Cause Courts Act, 1887, and all orders passed by him in execution of other proceedings arising out of decrees and orders passed in such suits shall be valid.

UTTAR PRADESH APPROPRIATION ACT, 1951

(U. P. ACT NO. XVII OF 1950)

CONTENTS

- | | |
|---|-------------------------------|
| 1. Short title. | Pradesh for the year 1950-51. |
| 2. Issue of Rs. 1,42,36,16,300, out of the Consolidated Fund of Uttar | 3. Appropriation. |

AUTHORITATIVE ENGLISH TEXT OF THE UTTAR PRADESH VINYOG ADHINIYAM, 1950

AN ACT

to authorise payment and appropriation of certain sums from and out of the Consolidated Fund of the State to the service of the year ending thirty-first day of March, 1951.

Note:—Passed in Hindi by the Uttar Pradesh Legislative Assembly on March 25, 1950 and by the Uttar Pradesh Legislative Council on March 27, 1950.

Received the assent of the Governor on March 29, 1950, under Article 200 of the Constitution of India and was published in *Gaz. Extra*, d. March 30, 1950.

Whereas it is expedient to authorise payment and appropriation of certain sums from and out of the Consolidated Fund of the State to the service of the year ending on the thirty-first day of March, 1951;

It is hereby enacted as follows :

Prefatory Note :—For S. O. R. see *Gaz. Extra*, d. March 25, 1950; For discussion, see L. A. Pro., d. March 25, 1950, in Vol. LXIV, pp. 323–327, d. June 12, 1950, in Vol. LXXV, p. 17 and L. C. Pro., d. March 27, 1950, in Vol. XV, pp. 418–457 d. June 24, 1950, in Vol. XVI, p. 13.

1. Short title. This Act may be called the Uttar Pradesh Appropriation Act, 1950.

2. Issue of Rs 1,42,36,16,300, out of the Consolidated Fund of Uttar Pradesh for the year 1950-51.—From and out of the Consolidated Fund of Uttar Pradesh there may be paid and applied sums not exceeding those specified in column 3 of the Schedule amounting in the aggregate to the sum of Rs. 1,42,36,16,300 (rupees one hundred and forty-two crores, thirty-six lakhs, sixteen thousand and three hundred only), towards defraying the several charges which will come in course of payment during the year ending on the thirty-first day of March, 1951, in respect of the services specified in column 2 of the Schedule.

3. Appropriation.—The sums authorised to be paid and applied from and out of the Consolidated Fund of Uttar Pradesh by this Act shall be appropriated for the services and purposes expressed in the Schedule in relation to the year ending on the thirty-first day of March, 1951.

SCHEDULE

(See *U. P. Gazette Extraordinary*, dated March 30, 1950)

THE UTTAR PRADESH APPROPRIATION (SUPPLEMENTARY) ACT, 1951

(U. P. Act No. VI of 1951)

CONTENTS

Sections.

1. Short title
2. Issue of Rs. 1,42,36,16,300 out of the Consolidated Fund of Uttar Pra-

Sections.

- desh for the year 1950-51.
3. Appropriation.
- Schedule.

AUTHORITATIVE ENGLISH TEXT OF THE UTTAR PRADESH VINIYOG (PURAK) ADHINIYAM, 1951

An Act to authorize further payment and appropriation of certain sums from and out of the Consolidated Fund of the State to the service of the year ending thirty-first day of March, 1951;

Whereas it is expedient to authorize further payment and appropriation of certain sums from and out of the Consolidated Fund of the State to the service of the year ending on the thirty-first day of March, 1951.

It is hereby enacted as follows :

Prefatory Note :—For discussion, see L. A. Pro., d. Jan. 15, 1951, in Vol. LXXXIX, pp. 58—65, d. Feb. 23, 1951, in Vol. X^t, p. 158, and L. C. Pro., d. Jan. 16 and 18, 1951, in Vol. XXI, pp. 484, 484—489 and Feb. 20, 1951, in Vol. XXII, p. 62.

Note :—Passed in Hindi by the Uttar Pradesh Legislative Assembly on Jan. 15, 1951, and considered and accepted by the Uttar Pradesh Legislative Council on Jan. 18, 1951.

Received the assent of the Governor on Feb. 1, 1951, under Article 200 of the Constitution of India and was published in *Gaz. Extra*, d. Feb. 7, 1951.

1. Short title. This Act may be called the Uttar Pradesh Appropriation (Supplementary) Act, 1951.

2. Issue of Rs. 1,11,43,800 out of the Consolidated Fund of Uttar Pradesh for the year 1950-51. From and out of the Consolidated Fund of Uttar Pradesh there may be paid and applied sums not exceeding those specified in column 3 of the Schedule amounting in the aggregate to the sum of Rs. 1,11,43,800 (rupees one crore, eleven lakhs, forty-three thousand and eight hundred only) towards defraying the several charges in course of payment during the year ending on the thirty-first day of March, 1951, in respect of the services specified in column 2 of the Schedule.

3. Appropriation —The sums authorized to be paid and applied from and out of the Consolidated Fund of Uttar Pradesh by this Act shall be appropriated for the services and purposes expressed in the Schedule in relation to the year ending on the thirty-first day of March, 1951.

SCHEDULE

(See U. P. Gazette Extraordinary, dated February 7, 1951)

THE UTTAR PRADESH APPROPRIATION (SECOND SUPPLEMENTARY) ACT, 1951

(U. P. Act No. VIII of 1951)

CONTENTS

Sections.

1. Short title.
2. Issue of Rs. 7,30,49,500 out of the Consolidated Fund of Uttar Pra-

Sections.

-
3. Appropriation.
- Schedule.

AUTHORITATIVE ENGLISH TEXT OF THE UTTAR PRADESH VINYOG (DWITYA PURAK) ADHINIYAM, 1951.

An Act to authorize further payment and appropriation of certain sums from and out of the Consolidated Fund of the State to the service of the year ending thirty-first day of March, 1951.

Whereas it is expedient to authorize further payment and appropriation of certain sums from and out of the Consolidated Fund of the State to the service of the year ending on the thirty-first day of March, 1951;

It is hereby enacted as follows :

Prefatory Note :—For S.O. R., see *Gaz. Extra*, d. Feb. 22, 1951.; for discussion, see L.A. Pro., d. Feb. 23, 1951, in Vol. XC, pp. 150—179 and 179—196, d. March 22, 1951, in Vol. XCIV, p. 93, and L. C. Pro., d. Feb. 24, 27, 1951 and March 27, 1951, in Vol. XXII, pp. 114, 195—208 and 460.

Note :-- Passed in Hindi by the Uttar Pradesh Legislative Assembly on Feb. 22, 1951, and by the Uttar Pradesh Legislative Council on Feb. 27, 1951.

Received the assent of the Governor on March 9, 1951, under Article 200 of the Constitution of India and was published in *Gaz. Extra.* d. March 10, 1951.

1. Short title—This Act may be called the Uttar Pradesh Appropriation (Second Supplementary) Act, 1951.

2. Issue of Rs. 7,30,49,500 out of the Consolidated Fund of Uttar Pradesh for the year 1950-51.—From and out of the Consolidated Fund of Uttar Pradesh there may be paid and applied sums not exceeding those specified in column 3 of the Schedule amounting in the aggregate to the sum of Rs. 7,30,49,500 (rupees seven crores, thirty lakhs, forty-nine thousand and five hundred only) towards defraying the several charges in course of payment during the year ending on the thirty-first day of March 1951, in respect of the services specified in column 2 of the Schedule.

3. Appropriation.—The sums authorized to be paid and applied from and out of the Consolidated Fund of Uttar Pradesh by this Act shall be appropriated for the services and purposes expressed in the Schedule in relation to the year ending on the thirty-first day of March, 1951.

SCHEDULE

(See *U. P. Gazette Extraordinary*, dated March 10, 1951)

THE UTTAR PRADESH APPROPRIATION ACT, 1951

(U. P. ACT NO. XIII OF 1951)

CONTENTS

Sections.

1. Short title.
2. Issue of Rs. 1,44,69,65,000 out of the Consolidated Fund of Uttar

Sections.

- Pradesh for the year 1951-52.
3. Appropriation.
- Schedule.

AUTHORITATIVE ENGLISH TEXT OF THE UTTAR PRADESH VINIYOG ADHINIYAM, 1951

An Act to authorize payment and appropriation of certain sums from and out of the Consolidated Fund of the State to the service of the year ending thirty-first day of March, 1952.

Whereas it is expedient to authorize payment and appropriation of certain sums from and out of the Consolidated Fund of the State to the service of the year ending on the thirty-first day of March, 1952;

It is hereby enacted as follows :

Prefatory Note :—For S.O. R., see *Gaz.*, d. March 31, 1951, Pt. VII, pp. 11—14; for discussion, see L.A. Pro., d. March 22, 1951, in Vol. XCIV, pp. 93—154, d. Aug. 23, 1951, in Vol. XCV, p. 241 and L.C. Pro. d. March 27, 29, 1951, in Vol. XXII, pp. 459, and 510—544, and d. Aug. 21, 1951, in Vol. XXIII, p. 15.

Note :—Passed in Hindi by the Uttar Pradesh Legislative Assembly on March 22, 1951, and by the Uttar Pradesh Legislative Council on March 29, 1951.

Received the assent of the Governor on March 31, 1951, under Article 200 of the Constitution of India and was published in *Gaz. Extra.*, d. March 31, 1951.

1. Short title.—This Act may be called the Uttar Pradesh Appropriation Act, 1951.

2. Issue of Rs. 1,44,69,65,000 out of the Consolidated Fund of Uttar Pradesh for the year 1951-52.—From and out of the Consolida-

ted Fund of Uttar Pradesh there may be paid and applied sums not exceeding those specified in column 3 of the Schedule amounting in the aggregate to the sum of Rs. 1,44,69,65,000 (rupees one hundred and forty-four crores, sixty-nine lakhs and sixty-five thousand only) towards defraying the several charges which will come in course of payment during the year ending on the thirty first day of March, 1952, in respect of the services specified in column 2 of the Schedule.

3. Appropriation.—The sums authorized to be paid and applied from and out of the Consolidated Fund of Uttar Pradesh by this Act shall be appropriated for the services and purposes expressed in the Schedule in relation to the year ending on the thirty-first day of March, 1952.

SCHEDULE

(See U. P. Gazette Extraordinary, dated March 31, 1951)

THE UTTAR PRADESH APPROPRIATION (SUPPLEMENTARY) ACT, 1951

U. P. Act No. XXIV of 1951)

CONTENTS

Sections.

- | | |
|---|--------------------------------|
| 1. Short title. | desh for the year 1951-52. |
| 2. Issue of Rs. 1,58,00,400 out of the
Consolidated Fund of Utter Pra- | 3. Appropriation.
Schedule. |

AUTHORITATIVE ENGLISH TEXT OF THE UTTAR PRADESH VINIYOG (PURAK) ADHINIYAM, 1951

An Act to authorize further payment and appropriation of certain sums from and out of the Consolidated Fund of the State to the service of the year ending thirty-first day of March, 1952.

Whereas it is expedient to authorize further payment and appropriation of certain sums from and out of the Consolidated Fund of the State to the service of the year ending on the thirty-first day of March, 1952;

It is hereby enacted as follows :

Prefatory Note:—For discussion, see L. A. Pro., d. Sep. 24, 1951, in Vol. XCIX, pp. 25—29, d. March 7, 1952, in Vol. C, p. 21 and L. C. Pro., d. Sep. 24, 1951, in Vol. XXIV, pp. 61 and 183—187, d. March 7, 1952, in Vol. XXIV, p. 294.

Note:—Passed in Hindi by the Uttar Pradesh Legislative Assembly on September 24, 1951 and by the Uttar Pradesh Legislative Council on September 27, 1951.

Received the assent of the Governor on Oct. 5, 1951 under Article 200 of the Constitution of India and was published in the *Gazette Extra.*, d. Oct. 15, 1951.

1. Short title.—This Act may be called the Uttar Pradesh Appropriation (Supplementary) Act, 1951.

2. Issue of Rs. 1,58,00,400 out of the Consolidated Fund of Uttar Pradesh for the year 1951-52.—From and out of the Consolidated Fund of Uttar Pradesh there may be paid and applied sums not exceeding those specified in column 3 of the Schedule amounting in the aggregate to the sum of Rs. 1,58,00,400 (Rupees one crore, fifty-eight lakhs and four hundred only) towards defraying the several charges in course of payment during the year ending on the thirty-

first day of March, 1952 in respect of the services specified in column 2 of the Schedule.

3. Appropriation.—The sums authorized to be paid and applied out of the Consolidated Fund of Uttar Pradesh by this Act shall be appropriated for the services and purposes expressed in the Schedule in relation to the year ending on the thirty-first day of March, 1952.

SCHEDULE

(See U. P. Gazette Extraordinary, dated October 15, 1951)

THE UTTAR PRADESH APPROPRIATION (SECOND SUPPLEMENTARY) ACT, 1952

(U. P. Act No. II of 1952)

CONTENTS

Sections.

1. Short title.
2. Issue of Rs. 7,46,78,800 out of the Consolidated Fund of Uttar Pra-

Sections.

-
3. Appropriation.

AUTHORITATIVE ENGLISH TEXT OF THE UTTAR PRADESH VINYOG (DWITIYA PURAK) ADHINIYAM, 1952

An Act to authorise payment and appropriation of certain sums from and out of the Consolidated Fund of the State to the service of the year ending thirty-first day of March, 1952.

Whereas it is expedient to authorise payment and appropriation of certain sums from and out of the Consolidated Fund of the State to the service of the year ending on the thirty-first day of March, 1952;

It is hereby enacted as follows :

Prefatory Note.—For discussion, see L. A. Pro., d. March 17, 1952, in Vol. C, pp. 195–202, d. May 21, 1952, in Vol. Cl, p. 49, and L. C. Pro., d. March 19, 1952, in Vol. XXIV, pp. 361–363, d. May 22, 1952, in Vol. XXV, p. 28.

Note.—Passed in Hindi by the Uttar Pradesh Legislative Assembly on March 17, 1952, and by the Uttar Pradesh Legislative Council on March 19, 1952.

Received the assent of the Governor on March 24, 1952, under Article 200 of the Constitution of India and was published in *Gaz. Extra.*, d. March 25, 1952.

1. Short title.—This Act may be called the Uttar Pradesh Appropriation (Second Supplementary) Act, 1952.

2. Issue of Rs. 7,46,78,800 out of the Consolidated Fund of Uttar Pradesh for the year 1951-52.—From and out of the Consolidated Fund of Uttar Pradesh there may be paid and applied sums not exceeding those specified in column 3 of the Schedule amounting in the aggregate to the sum of Rs 7,46,78,800 (rupees seven crores forty-six lakhs, seventy-eight thousand and eight hundred only) toward defraying the several charges which will come in course of payment during the year ending on the thirty-first day of March, 1952, in respect of the services specified in column 2 of the Schedule.

3. Appropriation.—The sums authorised to be paid and applied from and out of the Consolidated Fund of Uttar Pradesh by this Act shall be appropriated for the services and purposes expressed in the Schedule in relation to the year ending on the thirty-first day of March, 1952.

SCHEDULE

(See U. P. Gazette Extraordinary, dated March 25, 1952)

THE UTTAR PRADESH APPROPRIATION (VOTE ON ACCOUNT) ACT 1952

(U. P. Act No. III of 1952)

CONTENTS

Sections.

- | | |
|---|-----------------------------|
| 1. Short title. | <i>Sections.</i> |
| 2. Issue of Rs. 51,71,64,000 out of the Consolidated Fund of Uttar Pra- | deshi for the year 1952-53. |
| | 3. Appropriation. |
| | Schedule. |

AUTHORITATIVE ENGLISH TEXT OF THE UTTAR PRADESH VINYOG (LEKHANUDAN) ADHINIYAM, 1952

An Act to provide for the withdrawal of certain sums from and out of the Consolidated Fund of the State for the service of the year beginning on the first day of April 1952.

Prefatory Note:—For discussion, see L.A. Pro., d. March 18, 1952, in Vol. C, pp. 213—219, d. May 21, 1952, in Vol. CI, p. 49, and L. C. Pro., d. March 19 and 20, 1952, in Vol. XXIV, pp. 361 and 372, respectively, d. May 22, 1952, in Vol. XXV, p. 28.

Note:—Passed in Hindi by the Uttar Pradesh Legislative Assembly on March 18, 1952, and by the Uttar Pradesh Legislative Council on March 20, 1952.

Received the assent of the Governor on March 24, 1952, under Article 200 of the Constitution of India and was published in *Gaz. Extra.*, d. March 25, 1952.

1. Short title — This Act may be called the Uttar Pradesh Appropriation (Vote on Account) Act, 1952.

2. Issue of Rs. 51,71,64,000 out of the Consolidated Fund of Uttar Pradesh for the year 1952-53.—From and out of the Consolidated Fund of Uttar Pradesh there may be withdrawn sums not exceeding those specified in column 3 of the Schedule amounting in the aggregate to the sum of Rs. 51,71,64,000 (rupees fifty-one crores, seventy-one lakhs and sixty-four thousand only) towards defraying the several charges which will come in course of payment during the year beginning on the first day of April, 1952.

3. Appropriation.—The sums authorized to be withdrawn from and out of the Consolidated Fund of Uttar Pradesh by this Act shall be appropriated for the services and purposes expressed in the Schedule in relation to the said year.

SCHEDEULE

(See U. P. Gazette Extraordinary, dated March 25, 1952)

THE UTTAR PRADESH APPROPRIATION ACT, 1952

(U. P. Act No XIX of 1952)

CONTENTS

Sections.

- | | |
|--|-------------------------------|
| 1. Short title. | <i>Sections.</i> |
| 2. Issue of Rs. 1,49,24,59,100 out of the Consolidated Fund of Uttar | Pradesh for the year 1952-53. |
| | 3. Appropriation. |
| | Schedule. |

(AS PASSED BY U. P. LEGISLATURE)

An Act to authorise payment and appropriation of certain sums from and out of the Consolidated Fund of the State to the service of the year ending thirty-first day of March, 1953.

Whereas it is expedient to authorise payment and appropriation of certain sums from and out of the Consolidated Fund of the State to the service of the year ending on the thirty-first day of March, 1953;

It is hereby enacted as follows :

Prefatory Note :—For discussion, see L. A. Pro., d. July 26, 1952, in Vol. CV, pp. 430-52, and L. C. Pro., d. May 22, 1952, in Vol. XXV, d. July 28 and 29, 1952, and Sept. 16, 1952, in Vol. XXVI.

For publication, see *Gaz. Extra.*, d. July 31, 1952, pp. 1-2.

1. Short title.—This Act may be called the Uttar Pradesh Appropriation Act, 1952.

2. Issue of Rs. 1,49,24,59,100 out of the Consolidated Fund of Uttar Pradesh for the year 1952-53—From and out of the Consolidated Fund of Uttar Pradesh there may be paid and applied sums not exceeding those specified in column 3 of the Schedule amounting in the aggregate [inclusive of the sums specified in column 3 of the Schedule to the U. P. Appropriation (Vote of Account Act, 1952 (U. P. Act III of 1952))] to the sum of Rs. 1,49,24,59,100 (rupees one hundred and forty-nine crores, twenty-four lakhs, fifty-nine thousand and one hundred only) towards defraying the several charges which will come in course of payment during the year ending on the thirty-first day of March, 1953 in respect of the services specified in column 2 of the Schedule.

3. Appropriation.—The sums authorised to be paid and applied from and out of the Consolidated Fund of Uttar Pradesh by this Act shall be appropriated for the services and purposes expressed in the Schedule in relation to the year ending on the thirty-first day of March, 1953.

SCHEDULE

(See *U. P. Gazette Extraordinary*, dated July 31, 1952)

THE UTTAR PRADESH APPROPRIATION (FIRST SUPPLEMENTARY 1952-53) ACT, 1952

(U. P. ACT NO. XXVI OF 1952)

CONTENTS

Sections.

- | | | |
|-----------------|--|-------------------|
| 1. Short title. | 2. Issue of Rs. 94,72,900 out of the Consolidated Fund of Uttar Pra- | 3. Appropriation. |
|-----------------|--|-------------------|

Sections.

- | | |
|-----------------------------------|------------------|
| ...
dosh for the year 1952-53, | ...
Schedule. |
|-----------------------------------|------------------|

AUTHORITATIVE ENGLISH TEXT OF THE UTTAR PRADESH VINIYOG (PRATHAM ANUPURAK) ADHINIYAM 1952.

An Act to authorise payment and appropriation of certain sums from and out of the Consolidated Fund of the State to the service of the year ending thirty first day of March, 1953.

Whereas it is expedient to authorise payment and appropriation of certain sums from and out of the Consolidated Fund of the State to the service of the year ending on the thirty-first day of March, 1953.

It is hereby enacted as follows :

Prefatory Note :—For discussion, see L. A. Pro., d. Oct. 8, 1952, in Vol. CXI, and L. C. Pro., d. Oct. 9 and 16, 1952, in Vol. XXVII.

For publication, see *Gaz. Extra.*, d. Oct. 29, 1952, pp. 4–6.

1. Short title.—This Act may be called the Uttar Pradesh Appropriation (First Supplementary 1952-53) Act, 1952.

2. Issue of Rs. 94,72,900 out of the Consolidated Fund of Uttar Pradesh for the year 1952-53.—From and out of the Consolidated Fund of Uttar Pradesh there may be paid and applied sums not exceeding those specified in column 3 of the Schedule amounting in the aggregate to the sum of Rs. 94,72,900 (rupees ninety-four lakhs, seventy two thousand and nine hundred only) towards defraying the several charges which will come in course of payment during the year ending on the thirty-first day of March, 1953, in respect of the services specified in column 2 of the Schedule.

3. Appropriation.—The sums authorised to be paid and applied from and out of the Consolidated Fund of Uttar Pradesh by this Act shall be appropriated for the services and purposes expressed in the Schedule in relation to the year ending on the thirty-first day of March, 1953.

SCHEDULE

(See *U. P. Gazette Extraordinary*, dated October 29, 1952)

THE UTTAR PRADESH APPROPRIATION (SECOND SUPPLEMENTARY 1952-53) ACT, 1953

(U. P. ACT NO. XI OF 1953)

CONTENTS

Sections.

1. Short title.
2. Issue of Rs. 2,30,24,100 out of the Consolidated Fund of Uttar Pra-

Sections.

- desh for the year 1952-53.
3. Appropriation.
Schedule.

AUTHORITATIVE ENGLISH TEXT OF THE 1953 KA UTTAR PRADESH VINIYOG (1952-53 KA DWITIYA PURAK) ADHINIYAM, 1953

An Act to authorise payment and appropriation of certain sums from and out of the Consolidated Fund of the State to the service of the year ending thirty-first day of March, 1953.

Whereas it is expedient to authorise payment and appropriation of certain sums from and out of the Consolidated Fund of the State to the service of the year ending on the thirty-first day of March, 1953;

It is hereby enacted as follows :

Prefatory Note:—For Statement of Objects and Reasons, please see *U. P. Gazette Extraordinary*, dated February 20, 1953.

Act was passed in Hindi by the Uttar Pradesh Legislative Assembly on February 20, 1953, and by the Uttar Pradesh Legislative Council on February 23, 1953.

Received the assent of the Governor on March 6, 1953, under Article 200 of the Constitution of India and was published in the *Uttar Pradesh Gazette Extraordinary*, dated March 9, 1953.

1. Short title.—This Act may be called the Uttar Pradesh Appropriation (Second Supplementary 1952-53) Act, 1953.

2. Issue of Rs. 2,30,24,100 out of the Consolidated Fund of Uttar Pradesh for the year 1952-53.—From and out of the Consoli-

dated Fund of Uttar Pradesh there may be paid and applied sums not exceeding those specified in column 3 of the Schedule amounting in the aggregate to the sum of Rs. 2,30,24,100 (rupees two crores thirty lakhs twenty-four thousand and one hundred only) towards defraying the several charges which will come in course of payment during the year ending on the thirty-first day of March, 1953 in respect of the services specified in column 2 of the Schedule.

3. Appropriation.—The sums authorised to be paid and applied from and out of the Consolidated Fund of Uttar Pradesh by this Act shall be appropriated for the services and purposes expressed in the Schedule in relation to the year ending on the thirty-first day of March, 1953.

SCHEDULE

(See U. P. Gazette Extraordinary, dated March 9, 1953)

THE UTTAR PRADESH APPROPRIATION ACT, 1953

(U. P. ACT NO. XII OF 1953)

CONTENTS

Sections.

- | | |
|--|--|
| 1. Short title.
2. Issue of Rs. 2,20,23,21,900 out of
the Consolidated Fund of Uttar | <i>Sections.</i>
Prades for the year 1953-54.
3. Appropriation.
Schedule. |
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AUTHORITATIVE ENGLISH TEXT OF THE 1953 KA UTTAR PRADESH VINIYOG ADHINIYAM (APPROPRIATION ACT)

An Act to authorise payment and appropriation of certain sums from and out of the Consolidated Fund of the State to the service of the year ending thirty-first day of March, 1954.

Whereas it is expedient to authorise payment and appropriation of certain sums from and out of the Consolidated Fund of the State to the service of the year ending on the thirty-first day of March, 1954;

It is hereby enacted as follows :

Prefatory Note:—Act was passed in Hindi by the Uttar Pradesh Legislative Assembly on March 26, 1953, and by the Uttar Pradesh Legislative Council on March 26, 1953.

Received the assent of the Governor on March 31, 1953, under Article 200 of the Constitution of India and was published in the *Uttar Pradesh Gazette Extraordinary*, dated March 31, 1953.

1. Short title.—This Act may be called the Uttar Pradesh Appropriation Act, 1953.

2. Issue of Rs. 2,20,23,21,900 out of the Consolidated Fund of Uttar Pradesh for the year 1953-54.—From and out of the Consolidated Fund of Uttar Pradesh there may be paid and applied sums not exceeding those specified in column 3 of the Schedule amounting in the aggregate to the sum of Rs. 2,20,23,21,900 (Rupees two hundred and twenty crores, twenty-three lakhs, twenty one thousand and nine hundred only) towards defraying the several charges which will come in course of payment during the year ending on the thirty-first day of March, 1954 in respect of the services and purposes specified in column 2 of the Schedule.

3. Appropriation.—The sums authorised to be paid and applied from and out of the Consolidated Fund of Uttar Pradesh by this Act shall be appropriated for the services and purposes expressed in the Schedule in relation to the year ending on the thirty-first day of March, 1954.

SCHEDULE

(See U. P. Gazette Extraordinary, dated March 31, 1953)

THE UTTAR PRADESH APPROPRIATION (FIRST SUPPLEMENTARY 1953-54) ACT, 1953

(U. P. ACT NO. I OF 1954)

CONTENTS

Sections.

1. Short title.
2. Issue of Rs. 2,72,78,800 out of the Consolidated Fund of Uttar Pra-

Sections.

1. Short title.
2. Issue of Rs. 2,72,78,800 out of the Consolidated Fund of Uttar Pra-
3. Appropriation.

Schedule.

AUTHORITATIVE ENGLISH TEXT OF THE UTTAR PRADESH VINYOG (1953-54 KA PRATHAM POORAK) ADHINIYAM, 1953

An Act to authorise payment and appropriation of certain sums from and out of the Consolidated Fund of the State to the service of the year ending thirty-first day of March, 1954.

Whereas it is expedient to authorise payment and appropriation of certain sums from and out of the Consolidated Fund of the State to the service of the year ending on the thirty-first day of March, 1954;

It is hereby enacted as follows :

Prefatory Note :—Act was passed in Hindi by the Uttar Pradesh Legislative Assembly on December 24, 1953, and by the Uttar Pradesh Legislative Council on December 29, 1953.

Received the assent of the Governor on January 2, 1954, under Article 200 of the Constitution of India and was published in the *Uttar Pradesh Gazette Extraordinary*, dated January 8, 1954.

1. Short title.—This Act may be called the Uttar Pradesh Appropriation (First Supplementary 1953-54) Act, 1953.

2. Issue of Rs. 2,72,78,800 out of the Consolidated Fund of Uttar Pradesh for the year 1953-54.—From and out of the Consolidated Fund of Uttar Pradesh there may be paid and applied sums not exceeding those specified in column 3 of the Schedule amounting in the aggregate to the sum of Rs. 2,72,78,800 (Rupees two crores, seventy-two lakhs, seventy-eight thousand and eight hundred only) towards defraying the several charges which will come in course of payment during the year ending on the thirty-first day of March, 1954, in respect of the services and purposes specified in column 2 of the Schedule.

3. Appropriation.—The sums authorised to be paid and applied from and out of the Consolidated Fund of Uttar Pradesh by this Act shall be appropriated for the services and purposes expressed in the Schedule in relation to the year ending on the thirty-first day of March, 1954.

SCHEDULE

(See U. P. Gazette Extraordinary, dated January 8, 1954)

THE UTTAR PRADESH APPROPRIATION (SECOND SUPPLEMENTARY 1953-54) ACT, 1954

(U. P. ACT NO. III OF 1954)

CONTENTS

Sections.

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|--|----------------------------|
| 1. Short title. | desh for the year 1953-54. |
| 2. Issue of Rs. 6,71,66,600 out of the Consolidated Fund of Uttar Pra- | 3. Appropriation. |
| | Schedule. |

**AUTHORITATIVE ENGLISH TEXT OF THE 1954 KA UTTAR PRADESH VINYOG (1953-54 KA DWITIYA POORAK)
ADHINIYAM, 1954**

An Act to authorise payment and appropriation of certain sums from and out of the Consolidated Fund of the State to the service of the year ending thirty-first day of March, 1954.

Whereas it is expedient to authorise payment and appropriation of certain sums from and out of the Consolidated Fund of the State to the service of the year ending on the thirty-first day of March, 1954;

It is hereby enacted as follows :

Prefatory Note :—Act was passed in Hindi by the Uttar Pradesh Legislative Assembly on February 17, 1954, and by the Uttar Pradesh Legislative Council on February 19, 1954.

Received the assent of the Governor on February 24, 1954, under Article 200 of the Constitution of India and was published in the *Uttar Pradesh Gazette Extraordinary*, dated February 26, 1954.

1. Short title.—This Act may be called the Uttar Pradesh Appropriation (Second Supplementary 1953-54) Act, 1954.

2. Issue of Rs. 6,71,66,600 out of the Consolidated Fund of Uttar Pradesh for the year 1953-54.—From and out of the Consolidated Fund of Uttar Pradesh there may be paid and applied sums not exceeding those specified in column 3 of the Schedule amounting in the aggregate to the sum of Rs. 6,71,66,600 (rupees six crores, seventy-one lakhs, sixty-six thousand and six hundred only) towards defraying the several charges which will come in course of payment during the year ending on the thirty-first day of March, 1954 in respect of services and purposes specified in column 2 of the Schedule.

3. Appropriation.—The sums authorised to be paid and applied from and out of the Consolidated Fund of Uttar Pradesh by this Act shall be appropriated for the services and purposes expressed in the Schedule in relation to the year ending on the thirty-first day of March, 1954.

SCHEDULE

(See U. P. Gazette Extraordinary, dated February 26, 1954)

THE UTTAR PRADESH APPROPRIATION ACT, 1954

(U. P. ACT No. IX of 1954)

CONTENTS

Sections.

1. Short title.
2. Issue of Rs. 2,19,29,21,500 out of the Consolidated Fund of Uttar

Sections.

- Pradesh for the year 1954-55.
3. Appropriation.
- Schedule.

AUTHORITATIVE ENGLISH TEXT OF THE UTTAR PRADESH VINIYOG ADHINIYAM OF 1954.

An Act to authorise payment and appropriation of certain sums from and out of the Consolidated Fund of the State to the service of the year ending thirty-first day of March, 1955.

Whereas it is expedient to authorise payment and appropriation of certain sums from and out of the Consolidated Fund of the State to the service of the year ending on the thirty-first day of March, 1955 :

It is hereby enacted as follows :

Prefatory Note :—Act was passed in Hindi by the Uttar Pradesh Legislative Assembly on March 5, 1954 and by the Uttar Pradesh Legislative Council on March 29, 1954.

Received the assent of the Governor on March 30, 1954 under Article 200 of the Constitution of India and was published in the *Uttar Pradesh Gazette Extraordinary* dated March 31, 1954.

1. Short title.—This Act may be called the Uttar Pradesh Appropriation Act, 1954.

2. Issue of Rs. 2,19,29,21,500 out of the Consolidated Fund of Uttar Pradesh for the year 1954-55.—From and out of the Consolidated Fund of Uttar Pradesh there may be paid and applied sums not exceeding those specified in column 3 of the Schedule amounting in the aggregate to the sum of Rs. 2,19,29,21,500 (Rupees two hundred and nineteen crores, twenty-nine lakhs, twenty-one thousand and five hundred only) towards defraying the several charges which will come in course of payment during the year ending on the thirty-first day of March, 1955 in respect of the services and purposes specified in column 2 of the Schedule.

3. Appropriation.—The sums authorised to be paid and applied from and out of the Consolidated Fund of Uttar Pradesh by this Act shall be appropriated for the services and purposes expressed in the Schedule in relation to the year ending on the thirty-first day of March 1955.

SCHEDULE

(See U. P. Gazette Extraordinary, dated March 31, 1954)

UTTAR PRADESH APPROPRIATION (FIRST SUPPLEMENTARY 1954-55) ACT, 1954

(U. P. Act No. XIX OF 1954.)

CONTENTS

Sections.

1. Short title.
2. Issue of Rs. 1,59,53,200 out of the Consolidated Fund of Uttar Pradesh for the year 1954-55.
3. Appropriation, Schedule.

English translation of the Uttar Pradesh Viniyog (1954-55 Ka Pratham Purak) Adhiniyam, 1954.

As passed by the Uttar Pradesh Legislature, and assented to by the Governor on October 1, 1954, and published in the U. P. Gazette, Extraordinary, dated October 4, 1954.

An Act to authorise payment and appropriation of certain sums from and out of the Consolidated Fund of the State to the service of the year ending thirty-first day of March, 1955.

Whereas it is expedient to authorise payment and appropriation of certain sums from and out of the Consolidated Fund of the State to the service of the year ending on the thirty-first day of March, 1955;

It is hereby enacted in the fifth year of the Republic of India as follows :

1. Short title.—This Act may be called the Uttar Pradesh Appropriation (First Supplementary 1954-55) Act, 1954.

Note:—“Under Article 205 read with Article 204 of the Constitution an Appropriation Bill has to be introduced in the State Legislature after the demands for supplementary grants have been voted by the Legislative Assembly.

The Bill provides for the appropriation out of the Consolidated Fund of Uttar Pradesh of all moneys required to meet the supplementary grants made by the U. P. Legislative Assembly and the Supplementary expenditure charged on the Consolidated Fund of the State in respect of the financial year 1954-55.” [Vide Statement of Objects and Reasons, see the U. P. Gazette, Extraordinary, dated September 29, 1954.]

2. Issue of Rs. 1,59,53,200 out of the Consolidated Fund of Uttar Pradesh for the year 1954-55.—From and out of the Consolidated Fund of Uttar Pradesh there may be paid and applied sums not exceeding those specified in column 3 of the Schedule amounting in the aggregate to the sum of Rs. 1,59,53,200 (rupees one crore, fifty-nine lakhs, fifty-three thousand and two hundred only) towards defraying the several charges which will come in course of payment during the year ending on the thirty-first day of March, 1955 in respect of the services and purposes specified in column 2 of the Schedule.

3. Appropriation.—The sums authorised to be paid and applied from and out of the Consolidated Fund of Uttar Pradesh by this Act shall be appropriated for the services and purposes expressed in the Schedule in relation to the year ending on the thirty-first day of March, 1955.

SCHEME

(See U. P. Gazette Extraordinary, dated October 4, 1954)

THE UTTAR PRADESH APPROPRIATION (SECOND SUPPLEMENTARY 1954-55) ACT, 1955

(U. P. ACT NO. IV OF 1955)

CONTENTS

Sections.

- | | |
|--|---|
| 1. Short title. | <i>Sections.</i>
Pradesh for the year 1954-55. |
| 2. Issue of Rs. 6,52,92,300 out of the Consolidated Fund of Uttar Pra- | 3. Appropriation.
Schedule. |

AUTHORITATIVE ENGLISH TEXT OF THE U. P. VINIYOG (1954-55 KA DWITIYA POORAK) ADHINIYAM, 1955, PUBLISHED IN U. P. Gazette Extraordinary, DATED MARCH 2, 1955)

(As passed by the U. P. Legislature)

An Act to authorise payment and appropriation of certain sums from and out of the Consolidated Fund of the State to the service of the year ending thirty-first day of March, 1955.

Whereas it is expedient to authorise payment and appropriation of certain sums from and out of the Consolidated Fund of the State to the service of the year ending on the thirty-first day of March, 1955;

It is hereby enacted in the sixth year of the Republic of India as follows :

1. **Short title.**—This Act may be called the Uttar Pradesh Appropriation (Second Supplementary 1954-55) Act, 1955.

2. **Issue of Rs. 6,52,92,300 out of the Consolidated Fund of Uttar Pradesh for the year 1954-55.**—From and out of the Consolidated Fund of Uttar Pradesh there may be paid and applied sums not exceeding those specified in column 3 of the Schedule amounting in the aggregate to the sum of Rs. 6,52,92,300 (rupees six crores, fifty-two lakhs, ninety-two thousand and three hundred only) towards defraying the several charges which will come in course of payment during the year ending on the thirty-first day of March, 1955 in respect of the services and purposes specified in column 2 of the Schedule.

3. **Appropriation.**—The sums authorised to be paid and applied from and out of the Consolidated Fund of Uttar Pradesh by this Act shall be appropriated for the services and purposes expressed in the Schedule in relation to the year ending on the thirty-first day of March, 1955.

SCHEDULE

(See U. P. Gazette Extraordinary, dated March 2, 1955)

THE UTTAR PRADESH APPROPRIATION ACT, 1955

(U. P. ACT NO. X OF 1955)

CONTENTS

Sections.

- | | |
|--|---|
| 1. Short title. | <i>Sections.</i>
Pradesh for the year 1955-56. |
| 2. Issue of Rs. 2,14,34,37,100 out of the Consolidated Fund of Uttar | 3. Appropriation.
Schedule. |

Authoritative English Text of U.P. Viniyog Adhiniyam, 1955. Received the assent of the Governor on March 30, 1955 and the Act was published in U.P. Gazette Extraordinary, dated March 31, 1955.

(AS PASSED BY THE LEGISLATURE)

THE UTTAR PRADESH APPROPRIATION (SECOND SUPPLEMENTARY 1954-55) ACT, 1955

(U. P. ACT NO. IV OF 1955)

CONTENTS

Sections.

- | | |
|--|---|
| 1. Short title. | <i>Sections.</i>
Pradesh for the year 1954-55. |
| 2. Issue of Rs. 6,52,92,300 out of the Consolidated Fund of Uttar Pra- | 3. Appropriation.
Schedule. |

AUTHORITATIVE ENGLISH TEXT OF THE U. P. VINIYOG (1954-55 KA DWITIYA POORAK) ADHINIYAM, 1955, PUBLISHED IN U. P. Gazette Extraordinary, DATED MARCH 2, 1955)

(As passed by the U. P. Legislature)

An Act to authorise payment and appropriation of certain sums from and out of the Consolidated Fund of the State to the service of the year ending thirty-first day of March, 1955.

Whereas it is expedient to authorise payment and appropriation of certain sums from and out of the Consolidated Fund of the State to the service of the year ending on the thirty-first day of March, 1955;

It is hereby enacted in the sixth year of the Republic of India as follows :

1. **Short title.**—This Act may be called the Uttar Pradesh Appropriation (Second Supplementary 1954-55) Act, 1955.

2. **Issue of Rs. 6,52,92,300 out of the Consolidated Fund of Uttar Pradesh for the year 1954-55.**—From and out of the Consolidated Fund of Uttar Pradesh there may be paid and applied sums not exceeding those specified in column 3 of the Schedule amounting in the aggregate to the sum of Rs. 6,52,92,300 (rupees six crores, fifty-two lakhs, ninety-two thousand and three hundred only) towards defraying the several charges which will come in course of payment during the year ending on the thirty-first day of March, 1955 in respect of the services and purposes specified in column 2 of the Schedule.

3. **Appropriation.**—The sums authorised to be paid and applied from and out of the Consolidated Fund of Uttar Pradesh by this Act shall be appropriated for the services and purposes expressed in the Schedule in relation to the year ending on the thirty-first day of March, 1955.

SCHEDULE

(See U. P. Gazette Extraordinary, dated March 2, 1955)

THE UTTAR PRADESH APPROPRIATION ACT, 1955

(U. P. ACT NO. X OF 1955)

CONTENTS

Sections.

- | | |
|--|---|
| 1. Short title. | <i>Sections.</i>
Pradesh for the year 1955-56. |
| 2. Issue of Rs. 2,14,34,37,100 out of the Consolidated Fund of Uttar | 3. Appropriation.
Schedule. |

Authoritative English Text of U.P. Viniyog Adhiniyam, 1955. Received the assent of the Governor on March 30, 1955 and the Act was published in U.P. Gazette Extraordinary, dated March 31, 1955.

(AS PASSED BY THE LEGISLATURE)

An Act to authorise payment and appropriation of certain sums from and out of the Consolidated Fund of the State to the service of the year ending thirty-first day of March, 1956.

Whereas it is expedient to authorise payment and appropriation of certain sums from and out of the Consolidated Fund of the State to the services of the year ending on the thirty-first day of March, 1956;

It is hereby enacted in the sixth year of the Republic of India as follows :

1. **Short title.** This Act may be called the Uttar Pradesh appropriation Act, 1955.

2. **Issue of Rs. 2,14,34,37,100 out of the Consolidated Fund of Uttar Pradesh for the year 1955-56.**—From and out of the Consolidated Fund of Uttar Pradesh there may be paid and applied sums not exceeding those specified in column 3 of the Schedule amounting in the aggregate to the sum of Rs. 2,14,34,37,100 (rupees two hundred and fourteen crores, thirty-four lakhs, thirty-seven thousand and one hundred only) towards defraying the several charges which will come in course of payment during the year ending on the thirty-first day of March, 1956 in respect of the services and purposes specified in column 2 of the Schedule.

3 **Appropriation.**—The sums authorised to be paid and applied from and out of the Consolidated Fund of Uttar Pradesh by this Act shall be appropriated for the services and purposes expressed in the Schedule in relation to the year ending on the thirty-first day of March, 1956.

SCHEDULE

(See U. P. Gazette Extraordinary, dated March 31, 1955)

THE UNITED PROVINCES BADRINATH (SANITATION AND IMPROVEMENT) ACT, 1945

(U. P. ACT NO. V OF 1945)

CONTENTS

Sections.

1. Short title, extent and commencement.
2. Definition.
3. Duties and power.
4. By-laws.
5. Officers and servants of the Committee to be deemed public servants.
6. Delegation of duties and powers.

Sections.

7. Removal or destruction of boundary mark.
8. Fines.
9. Punishment.
10. Appeals.
11. Fund.
12. Staff.
13. Power of the State Government to make rules.

Adapted and modified by the Adaptation of Laws Order, 1950.

[Prepared by His Excellency the Governor of the United Provinces in exercise of the powers assumed by him by the Proclamation, dated November 3, 1939, issued under Section 93 of the Government of India Act, 1935.]

[Received the assent of the Governor of United Provinces on May 20, 1945 and was published in United Provinces Government Gazette on May 26, 1945, Pt. VII-A, pp. 9-10.]

*An act to make better provision for the sanitation and improvement
of Badrinath Puri.*

Whereas it is expedient to make better provision for the sanitation and improvement of Badrinath Puri ;

And whereas by the Proclamation, dated the third day of November, 1939, promulgated under Section 93 of the Government of India Act, 1935, the Governor of the United Provinces has assumed to himself all powers vested by or under the aforesaid Act in the Provincial Legislature ;

And whereas the said Proclamation is still in force ;

Now therefore, the Governor, in exercise of the powers aforesaid is pleased to make the following Act :

Prefatory Note :—This Act was prepared by the Governor in exercise of the powers assumed by him by the Proclamation, d. Nov. 3, 1939, issued under Section 93 of the G. of I. Act, 1935, and was published with S. O. R. in *Gaz.*, 1945, Pt. VII, p. 3-4. It was re-enacted and continued by Section 2 and Sch. of U. P. Act XIII of 1948.

1. Short title, extent and commencement.—(1) This Act may be called the United Provinces Badrinath (Sanitation and Improvement) Act, 1945.

(2) It extends to the area known as Badrinath Puri.

(3) It shall come into force on such date as the [State Government]¹ may by notification in the official *Gazette* appoint in this behalf.

Note :—The Act came into force on July 1, 1945, *see* not. No. 1386/XVI (P.H.)—17-CE-44, d. June 22, 1945, in *Gaz.*, 1945, Pt. I, p. 199.

2. Definition.—In this Act, unless there is anything repugnant in the subject or context.—

(a) “Badrinath Puri” means such area round about the temple of Shri Badrinath in Garhwal as may from time to time be notified by the [State Government]¹;

(b) “Committee” means the Shri Badrinath Temple Committee constituted under the Shri Badrinath Temple Act, 1939.

(c) “By-law” means a by-law framed by the Committee under this Act.

(d) “Street” shall have the meaning assigned to it in the United Provinces Municipalities Act, 1916.

(e) “Building” means a house, hut, shed or other roofed structure, for whatsoever purpose and of whatsoever material constructed, and every part thereof, and includes a wall or masonry platform or masonry ditch or drain, but does not include a tent or other such portable and merely temporary shelter.

3. Duties and power.—Notwithstanding anything contained in the United Provinces District Boards Act, 1922, or any other law for the time being in force —

(1) It shall be the duty of the Committee to make reasonable provisions within the Badrinath Puri for—

1. Subs. by the A. O. 1950 for [Provl. Govt.]

- (a) erecting and maintaining boundary pillars of Badrinath Puri;
- (b) the cleaning of private drains and latrines;
- (c) maintaining and cleaning public drains and latrines;
- (d) maintaining, cleaning and lighting streets and public places;
- (e) providing and maintaining dumping ground for refuse and night-soil;
- (f) establishing and maintaining a cattle pound;
- (g) facilities for medical relief;
- (h) disposing of unclaimed dead bodies;
- (i) regulating or prohibiting any description of traffic and preventing encroachments on streets;
- (j) protecting the rivers, springs and sacred precincts from pollution;
- (k) examining periodically all sources of water used for drinking;
- (l) regulating the digging of earth and filling up of all excavations and depressions injurious to health or offensive to the neighbourhood;
- (m) removing obnoxious vegetation;
- (n) the disposal or destruction of materials likely to convey infection;
- (o) seizing and destroying food unfit for human consumption;
- (p) segregating patients where medically necessary;
- (q) any other matter which may from time to time be specified by the [State Government]¹.

(2) The Committee may, and if required by the District Magistrate, Garhwal, shall,—

- (a) levy and realize fees for any service rendered;
- (b) seize and keep in a cattle-pound any animal roaming in any street;
- (c) levy charges for the feeding and keeping of such animals;
- (d) fix the conditions subject to which and the circumstances in which, and the areas in respect of which, licences for the sale of fruit, vegetables or sweetmeats or other edibles may be granted, refused, suspended or withdrawn, and levy and realize such fees from the licensees as may be fixed from time to time;
- (e) prescribe terms and conditions according to which houses shall be maintained for the use of pilgrims;
- (f) regulate or prohibit offensive trades and callings;
- (g) regulate burial and burning grounds;
- (h) regulate the repair or removal of dangerous or ruinous buildings and the construction of new one;

1. Subs. by the A. O. 1950 for [Provl. Govt.].

- (i) prohibit the storage of more than a fixed quantity of petroleum or kerosene in any building;
- (j) prohibit the removal or use for drinking of water from any stream, spring, tank or other source where such removal or use causes, or is likely to cause, disease or injury to health;
- (k) prohibit the deposit or storage of manure, refuse or other offensive matter in a manner prejudicial to the public health, comfort or convenience;
- (l) regulate bathing and washing places;
- (m) with the sanction of the District Magistrate, do any other thing necessary for the sanitation and improvement of Badrinath Puri.

Note :—For boundary of Shri Badrinath, see not. no. 1380(2)/XVI (P.H.)—17-CE, d. June 22, 1945, Pt. IA p. 169.

4. By-laws.—(1) The Committee may, and if directed by the [State Government]¹ shall make by-laws for the discharge of its duties and exercise of its powers under this Act.

(2) The power of the Committee to make by-laws shall be subject to the condition of the by-laws being made after previous publication in the official *Gazette* and of their not taking effect until they have been approved by the [State Government]¹ and published in the official *Gazette* after such approval.

Note —For by-laws, see not. no. 412/XVI (P. H.)—13-CE, d. April 4, 1946.

5. Officers and servants of the Committee to be deemed public servants.—Every servant or officer of the Committee engaged or employed in connection with this Act shall be deemed to be a public servant within the meaning of the Indian Penal Code.

6. Delegation of duties and powers.—The Committee may, with the sanction of the District Magistrate, Garhwal delegate any of its duties or powers to any of its servants subject to such conditions and limitations as it may deem fit to impose.

7. Removal or destruction of boundary mark.—No person shall remove, or destroy or interfere with any boundary mark erected by or under the orders of the Committee.

8. Fines.—All fines realised for offences punishable under this Act or any by-law shall, after the deduction of all incidental expenses, be made over to the Committee.

9. Punishment.—Any person contravening any provision of this Act or any by-law shall be punished with a fine that may extend to Rs. 250 and, in a case where the breach is continued breach, with a further fine which may extend to Rs. 5 for every day after the date of the first conviction during which the offender is proved to have persisted in the offence.

10. Appeals.—(1) Any person aggrieved by an order of the Committee may within thirty days from the date of such order appeal to the District Magistrate, Garhwal, whose order on appeal shall be final.

1. Subs. by the A. O. 1950 for [Provl. Govt.].

(2) No order referred to in sub-section (1) either of the Committee or of the District Magistrate shall be questioned in any court of law.

11. Fund.—There shall be maintained a fund under the control of the Committee to meet the recurring and non-recurring expenditure required for carrying out the purposes of this Act. The Committee shall contribute to the fund such amount as may be fixed by the [State Government]¹. The [State Government]¹ shall contribute an amount that is equal to the amount of fines realised each year under this Act, and may contribute such additional amount as it may from time to time consider necessary.

12. Staff.—The Committee may employ such staff as it considers necessary for the enforcement of the Act or any by-law and such staff shall be under the administrative control of the Secretary of the Committee subject to such general or special directions as may be given by the Committee in this behalf.

13. Power of the State Government to make rules.—The [State Government]¹ may make rules consistent with this Act for carrying out the purposes of this Act.

Note:—For rules, see not. no. 4967/XVI(P.H.)—7-C.E.-15, d. Jan. 27, 1945.

THE UNITED PROVINCES SHRI BADRINATH TEMPLE ACT, 1939

(U. P. ACT NO. XVI OF 1939)

CONTENTS

Sections

1. Short title and commencement.
2. Act to override Act XX of 1863, etc.
3. Definitions.
4. Vesting of property.
5. The Committee.
6. Appointment by the Government if no election or nomination.
7. Incorporation.
8. Terms of office of President and members.
9. Power of State Government to enter in agreement with Tehri State.
10. Power of Government to remove the President or members of the Committee.
11. Dissolution and supersession of Committee.
- Filling up of vacancies.
- Office and meetings of the Com-

Sections

- mittee.
- Rawal, Naib-Rawal and Secretary.
- Officers and servants of the Committee, their appointment and punishment, etc.
- Liability of members
- Alienation of movable property
- Limitation of borrowing power.
- Audit.
- Administration report.
- Power of Government to call for information and accounts.
- Inspection.
- Duties of the Committee.
- Bar to suit or proceedings.
- Power of the Committee to make by-laws.
- Power of Government to make rules.
- Transitory provisions.
- Schedules I and II.

[Received the assent of the Governor on December 4, 1939, under Section 75 of the Government of India Act, 1935, and was published on December 9, 1939].

1. Subs. by the A. O. 1950 for [Provl. Govt.].

Preamble:—An Act to provide for the better administration and governance of the Shri Badrinath Temple and its endowments.

Whereas it is expedient to provide for the better administration and governance of the Shri Badrinath Temple and its endowments;

It is hereby enacted as follows :

Prefatory Note:—The following extracts from the statement of Objects and Reasons may be usefully noticed :

"The Badrinath Temple which is one of the foremost sacred place of Hindu pilgrimage in India is situated in the Garhwal District on the heights of the Himalayas. Under the scheme of 1899 at present in force its management is in the hands of the Rawal, while the Tehri Durbar is invested with certain supervisory powers. The defective nature of the scheme has been the source of constant friction between the Rawal and the Tehri Durbar. As a result, supervision of the temple has suffered, its income has been squandered and the convenience of the pilgrims has been neglected. The unsatisfactory condition of the temple which has existed for a long time was specially brought to the notice of Government by the Hindu Religious and Charitable Endowments Committee in 1928. Since then public agitation has been continually pressing for reform in its management. The Bill which is now introduced seeks to remove the chief defects of the present scheme. It restricts the Rawal to his priestly duties and places the secular management of the temple in the hands of a small committee which would be partly elected and partly nominated. It preserves at the same time the traditional control of the Tehri Durbar; while adequate powers have been reserved for Government to guard against mismanagement by the Committee.

Note:—For S. O. R., see Gazette, 1939, 1^t. VII-A, p. 17; for R. S. Committee, see *ibid*, Pt. VII-B, pp. 49-51; for discussion, see L. A. Proceeding dated March 31, and April 5, 1^t and 19, 1939, in Vol. XVI, pp. 57-70, 374-375, and 832 and Vol. XVII pp. 188-230 respectively; and L. C. Proceeding dated April 25, and 26, 1939 in Vol. IV, pp. 678 and 745-779 and 780-798 respectively.

1. Short title and commencement.—(1) This act may be called the United Provinces Shri Badrinath Temple Act, 1939.

(2) It shall come into force on such date as the [State Government]¹ may, by notification in the official *Gazette* appoint in this behalf.

Note 1:—The Act came into force on April 15, 1940, *see* not. no. 172/XVI—(P. H.)—II.C. E., d. Feb. 27, 1940, in *Gaz.*, 1940, Pt. I. p. 133.

Note 2:—The Act has been extended to the merged States of Banaras and Tehri-Garhwal by the Banaras (Application of Laws) Order, 1949 and Tehri-Garhwal (Application of Laws) Order, 1949 respectively.

2. Act to override Act XX of 1863 etc.—This Act shall have effect notwithstanding anything to the contrary contained in the Religious Endowment Act, 1863, or in any scheme of management framed by the Court before the passing of this Act, or in any decree, custom or usage :

²[Provided that the Committee may with the previous sanction of the [State Government]¹ on a claim preferred within one year of the commencement of this Act, give such recognition and effect to any decree, custom or usage relating to the Shri Badrinath Temple ¹[or Shri Kedarnath Temple]³ and [their]⁴ endowments as it may deem fit, and may, at the same time provide that such decree, custom or usage shall have effect subject to such exceptions or modifications as it may direct. Any orders passed by the Committee under this proviso may

1. *Subs.* by the A. O. 1950 for [Prov'l. Govt.]

him under S. 93 of the G. of I. Act, 1935.

2. *Subs.* by S. 2 of U. P. Act IV of 1941, made by the Governor in exercise of the powers assumed by

3. *Ins.* by S. 2 of U. P. Act XXX of 1948.
4. *Subs.* by *ibid* for [its].

with the previous sanction of the [State Government]¹ at any time, be varied, modified or rescinded].

3. Definitions.—In this Act unless there is anything repugnant in the subject or context—

(a) ²[“The Temple” means, ³[(1) the Temple of Shri Badrinath in Garhwal, other temples within its premises comprising survey Nos. 223, 224, 225, 226, 227, 228, 368 369 and 370 of the survey of the year 1930-31 of the village of Badrinath in patti Talla Pain Khana, district Garhwal, all their appurtenant and subordinate temples mentioned [in Schedule I]⁴ and any additions which may be made thereto after the commencement of this Act.

Explanation—Temples within the premises of the Temple of Shri Badrinath in Garhwal shall include Shri Lakshmi Temple, the images of Garur, Hanumanji, Ghantakaran and all other minor images situated within the survey plots named above ;

⁵[and (2) the Temple of Shri Kedarnath in Garhwal and includes the appurtenant and subordinate shrines mentioned in Schedule II].

(b) “Endowment” means all property, movable or immovable, belonging to, or given or endowed for the maintenance or improvement of, or additions to, or worship in The Temple or for the performance of any service or charity connected therewith and includes the idols installed therein, the premises of the said Temple and gifts of property made to anyone within the precincts of The Temple ;

(c) “Committee” means the Shri Badrinath Temple Committee constituted under this Act ;

(d) “Court” means the principal court of original civil jurisdiction within the local limits of which The Temple is situate ;

(e) “Scheme” means a scheme of management settled by the Court under the provisions of Section 92 of the Code of Civil Procedure, 1908.

4. Vesting of property.—The ownerships of The Temple and all the endowments which have been or may hereafter be made for the benefit of the said Temple in the name of any person, or for the convenience, comfort or benefit of the pilgrims shall vest in the deity of [Shri Badrinath or Shri Kedarnath Temple, as the case may be] and the Committee appointed under Section 5 shall be entitled to their possession.

5. The Committee.—(1) The administration and the governance of the Temple and its endowments shall be in the hands of a Committee which shall be composed as follows :

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|--|---|
| 1. <i>Subs. by the A. O. 1950 for [Provincial Government].</i> | 4. <i>Subs. by S. 3 (ii) ibid for [in the Schedule annexed to this Act].</i> |
| 2. <i>Subs. by S. 2 of U. P. Act IV of 1948 for cl. (a) of S. 3 of the original Act.</i> | 5. <i>Add. by S. 3 (iv) ibid. Full-stop of the explanation was converted into colon by S. 3 (iii) (ibid).</i> |
| 3. <i>Ins. by S. 3 (i) of U. P. Act XXX of 1948.</i> | 6. <i>Subs. by S. 4 of U. P. Act XXX of 1948 for [Shri Badrinath].</i> |

- (a) [Four]¹ persons from Tehri State elected or nominated in such manner as may be agreed upon * * *² between His Highness the Maharaja of Tehri and the [State Government]³;
- *[(b) two persons residing in Garhwal District of whom at least one shall be a resident of Chamoli Tahsil, elected by the Hindu members of the District Board of Garhwal];
- (c) two persons elected by the Hindu members of the *[Uttar Pradesh] Legislative Assembly and one person elected by the Hindu members of the *[Uttar Pradesh] Legislative Council;
- (d) the President of the Committee and two members to be appointed by the [State Government]³.

(2) No person who does not profess the Hindu religion and accept the form of worship practised at The Temple shall be eligible for membership, or for the office of the President of the Committee.

(3) The nomination, election or appointment of the members and the President shall be notified in the official *Gazette*.

*[(4) There shall be only one committee for the administration and the governance of the Shri Badrinath and Shri Kedarnath Temples, including the subordinate and appurtenant temples and the committee as constituted at the date of the commencement of Shri Badrinath Temple (Amendment) Act, 1948, shall be deemed to have been duly appointed under this Act for the purposes of both the Temples].

6. Appointment by the Government if no election or nomination.—If a member is not elected or nominated, as the case may be, within a date fixed by the [State Government]³ or any other date to which such elections or nominations may have been extended by it, the [State Government]³ shall appoint a person in the place so left vacant :

Provided that in the case of a vacancy in all or any of the seats under clause (a) of sub-section (1) of Section 5, or in the event of no agreement between His Highness the Maharaja of Tehri and the [State Government]³ being arrived at within six months of the commencement of the Act, the [State Government]³ shall fill in the vacancy by appointment of persons belonging to only Garhwal District, of whom one at least shall be of scheduled caste.

7. Incorporation.—The Committee shall be called the Shri Badrinath [and Shri Kedarnath Temples]⁷ Committee. It shall be a body corporate and shall have perpetual succession and a common seal and may by the said name sue and be sued.

8. Terms of office of President and members.—The President and members of the Committee shall hold office for three years from

- | | |
|--|--|
| 1. Subs. by S. 2(a) of U. P. Act XV of 1948 for [three].
2. The words [within six months of the commencement of the Act] omit. by S. 2(b) <i>ibid.</i>
3. Subs. by the A. O. 1950 for [Provl. Govt].
4. Subs. by S. 5 of U. P. Act, XXX | of 1948 for cl. (b) of S. 5(1) of the original Act.
5. Subs. by the A. O. 1950 for [United Provinces].
6. Add. by S. 5(2) of U. P. Act XXX of 1948.
7. Subs. by S. 6 of U. P. Act XXX of 1948 for [Temple]. |
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the date of notification under sub-section (3) of Section 5. They shall be eligible for re-appointment or re-election, as the case may be.

9. Power of State Government to enter in agreement with Tehri State.—Subject to the provisions of this Act and consistently with the object of The Temple, His Highness the Maharaja of Tehri may exercise such powers in relation to The Temple as may be agreed upon between the Maharaja and the [State Government]¹.

10. Power of Government to remove the President or members of the Committee.—(1) The [State Government]¹ may suspend or remove the President or any member of the Committee on the following grounds :

- (a) that he has been convicted by a criminal court of any offence which, in the opinion of the Government, involves moral turpitude ;
- (b) that he is of unsound mind or a deaf mute or suffers from contagious leprosy ;
- (c) that he has applied to be adjudged or been adjudged insolvent ;
- (d) that he has been guilty of corruption or misconduct in the administration of The Temple or that some other sufficient cause exists for his removal ;
- (e) that he has ceased to profess the Hindu religion and faith in the form of worship practised at The Temple ;
- (f) that he has absented himself from more than three consecutive meetings of the Committee and is unable to explain such absence to the satisfaction of the Committee ;
- (g) that being a legal practitioner he has acted or appeared on behalf of any person against the Committee in any legal proceedings ; or
- (h) that he is a paid employee of The Temple.

(2) No member shall be removed under this section unless he has been given a reasonable opportunity of showing cause against his removal.

11. Dissolution and supersession of Committee.—(1) If in the opinion of the [State Government]¹ the Committee is not competent to perform, or persistently makes default in performing the duties imposed on it under this Act, or exceeds or abuses its powers, the [State Government]¹ may, after due enquiry, by notification dissolve or supersede the Committee and direct the reconstitution of another Committee in accordance with the provisions of this Act.

(2) Before, issuing a notification under sub-section (1) the [State Government]¹ shall communicate to the Committee the grounds on which they propose to do so, fix a reasonable time for the Committee to show cause against the proposal, and consider its explanations or objections, if any.

(3) Where a Committee is dissolved or superseded under this section the [State Government]¹ shall appoint a person to perform the

1. Subs. by the A. O. 1950 for [Provl. Govt.].

functions and exercise the powers of the Committee until the constitution of another Committee.

(4) The [State Government]¹ may fix a remuneration for such officer, and the same shall be paid from the funds of The Temple.

12. Filling up of vacancies.—(1) Casual vacancies in the office of the President and members of the Committee shall be filled in the same way as provided in Section 5.

(2) The term of the President or a member appointed or elected, as the case may be, to fill a casual vacancy shall expire on the day on which the term of the President or member in whose vacancy the appointment has been made would have expired.

(3) Nothing done by the Committee shall be invalid by reason of there being a casual vacancy.

(4) If no member is elected or nominated within three months of the occurrence of a vacancy, the [State Government]¹ shall appoint a person to fill the vacancy.

13. Office and meetings of the Committee.—(1) The Committee shall maintain its office at such place or places as the [State Government]¹ may fix for the transaction of its business.

(2) At the meeting of the Committee the President or, in his absence, one of the members to be elected at the meeting, shall preside.

(3) No business shall be transacted at any meeting unless at least four members are present.

14. Rawal, Naib-Rawal and Secretary.—The Committee shall appoint a Rawal and a Naib-Rawal for The Temple, and a Secretary who will be its chief executive officer.

15. Officers and servants of the Committee, their appointment and punishment etc.—(1) The present Rawal shall continue to hold his office until his death, resignation or removal by the Committee.

(2) On the occurrence of a vacancy in the office of Rawal, the Committee shall appoint the Naib-Rawal as the Rawal.

(3) The Rawal and Naib-Rawal shall perform such functions and shall have such powers as may be prescribed by the Committee.

(4) The Committee may, with the approval of the [State Government]¹ from time to time, determine the number, designation, and grade of its officers and servants and the scale of salaries and other remuneration for them and for the Rawal, the Naib-Rawal and the Secretary.

(5) Except the Rawal, the Naib-Rawal and the Secretary who may be punished or removed only by the Committee, the President of the Committee shall, subject to such rules as the Committee may frame, have the power to appoint and transfer other officers and servants and may fine, reduce, suspend, remove or dismiss them for breach of rules or discipline, for carelessness, unfitness, neglect of duty or misconduct or other sufficient cause :

Provided that in the case of servants whose pay is not more than Rs. 50 per mensem the powers mentioned in this sub-section may be

1. Subs. by the A.O. 1950 for [Provl. Govt.]

delegated by the President to the Secretary. The orders of the President or the Secretary under this sub-section shall be appealable to the Committee within 30 days of the passing of the order.

(6) The Rawal or the Naib-Rawal or the Secretary may appeal to the ¹[State Government] within 30 days of a resolution of the Committee removing him, and the Government may, on a consideration of all relevant and available materials that they may deem fit to consider, pass such orders as in their opinion may be just and equitable, and such order shall be final.

16. Liability of members.—Every member of the Committee shall be liable for the loss, waste or misapplication of any money or other property belonging to the Committee, if such loss, waste or misapplication is a direct consequence of his wilful act or omission while a member, and a suit for compensation may be instituted against him either by the Committee or by the Government.

17. Alienation of movable property.—(1) No jewelleries or other valuable property of a non-perishable nature vested in the Committee shall be transferred without the previous sanction of the Committee, and if the value of the property is more than rupees one thousand, the previous approval of the [State Government]¹ shall also be necessary.

(2) No immovable property, land held on mortgage, lease or otherwise, vested in the Committee shall be leased for more than five years or mortgaged, sold or otherwise alienated except with the previous sanction of the Committee and the Government.

18. Limitation of borrowing power.—The Committee shall have no power to borrow money from any person except with the previous sanction of the ¹[State Government].

19. Audit.—The [State Government]¹ shall every year appoint an auditor to audit the accounts of The Temple and its endowments, and fix his remuneration which shall be paid to such auditor from the funds thereof. The auditor shall submit his report to the Committee and send a copy of it to the [State Government]¹ which may issue such directions thereon as it may deem fit, and the Committee shall carry out such directions.

20. Administration report.—The Committee shall annually submit to the [State Government]¹ a report on the administration of the affairs of The Temple at such time as the [State Government]¹ may prescribe.

21. Power of Government to call for information and accounts.—The [State Government]¹ shall have power to call for all such information and accounts as may in their opinion be necessary for reasonably satisfying themselves that The Temple is properly maintained, the endowments thereof are properly administered and their funds duly appropriated to the purposes for which they were founded or exist; and the Committee shall, on such requisition, furnish forthwith such information and accounts to the [State Government]¹. The [State Government]¹ may issue such directions to the Committee, as they may deem fit, and the Committee shall carry them out.

1. Subs. by the A.O. 1950 for [Provl. Govt.]

22. Inspection.—(1) The [State Government]¹ may depute an officer to inspect any movable or immovable property, records, correspondence, plans, accounts, and other documents, relating to The Temple. The Committee and its employees shall be bound to afford facilities to such officer for inspection.

(2) The [State Government]¹ may fix remuneration for such officer, and the same shall be paid from the funds of The Temple.

23. Duties of the Committee—Subject to the provisions of this Act or of any rules made thereunder, it shall be the duty of the Committee—

(1) to arrange for the proper performance of worship at The Temple ;

(2) to provide facilities for the proper performance of worship by the pilgrims ;

(3) to make arrangements for the safe custody of the funds, valuable security and jewelleries and for the preservation of the property vested in the deity of Shri Badrinath [or Shri Kedarnath]² ;

(4) to ensure that the funds of the endowment are spent according to the wishes, so far as may be known, of the donors ;

(5) to undertake for the benefit of the worshippers and pilgrims—

(a) the construction of buildings for their accommodation ;

(b) the construction of sanitary works ; and

(c) the improvement of means of communication ;

(6) to make suitable arrangements for the imparting of religious instruction and general education ;

(7) to make provision for medical relief of worshippers and pilgrims ;

(8) to make provision for the payment of suitable emoluments to its salaried staff ;

(9) to do all such things as may be incidental and conducive to the efficient management of The Temple and endowments and the convenience of the pilgrims.

24. Bar to suit or proceedings.—No suit or proceedings shall lie in any court against the [State Government]¹ for anything done or purported to be done by it under the provisions of this Act.

25. Power of the Committee to make by-laws.—(1) The Committee may make by-laws not inconsistent with this Act or the rules made thereunder or any other law for—

(a) the division of duties among the President, the members and the Secretary of the Committee ;

(b) the manner in which their decision may be ascertained otherwise than at the meeting ;

(c) the procedure and conduct of business at meetings of the Committee ;

(d) the delegation of powers of the Committee to individual members or to a sub-committee or sub-committees ;

1. Subs. by the A. O. 1950 for [Prov. Govt.] 2. Add. by S. 7 of U. P. Act XXX of 1948.

- (e) the books and accounts to be kept at the office of the Committee;
- (f) the custody and investment of funds of the Committee;
- (g) the details to be included in or excluded from the budget of the Committee;
- (h) the time and place of its meetings;
- (i) the manner in which notice of its meetings shall be given;
- (j) the preservation of order and the conduct of proceedings at meetings and the powers which the President may exercise for the purpose of enforcing its decision;
- (k) the manner in which the proceedings of its meetings shall be recorded and published;
- (l) the persons by whom receipts may be granted for moneys paid to the Committee;
- (m) the maintenance of order inside The Temple and regulating the entry of persons therein; and
- (n) the performance of duties provided in Section 23.

(2) No by-laws or cancellation or alteration of a by-law made by the Committee shall have effect until the same shall have been published for public criticism and thereafter confirmed by the [State Government]¹.

(3) All by-laws after they have been confirmed by the [State Government]¹ shall be published in the official *Gazette*, and shall thereafter have the force of law.

²[25-A.—The date of the commencement of this Act shall in its application to Shri Kedarnath Temple be deemed to be the date of the commencement of Shri Badrinath Temple (Amendment) Act, 1948.]

26. Power of Government to make rules.—(1) The [State Government]¹ may make rules consistent with this Act to carry out its purposes.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for—

- (a) all matters expressly required or allowed by this Act to be provided for by rules;
- (b) election of members, the tribunal to decide election disputes and the procedure to be followed by it;
- (c) budgets, returns, accounts, reports, and any other information to be submitted by the Committee;
- (d) the qualifications for officers and servants of the Committee, the establishment of a provident fund for them and generally the conditions of their service;
- (e) the grant of leave and travelling allowances to the officers and servants of the Committee, including the Rawal, the Naib-Rawal and the Secretary;
- (f) the payment of remuneration or travelling allowances to the President and members of the Committee when travelling

2. Ins. by S. 8 of U. P. Act XXX of 1948.

on business connected with the affairs of the Committee : Provided that the remuneration or travelling allowance shall in no case exceed that allowed to the members of the [State]¹ Legislature ;

(g) the co-option by the Committee of not more than two members subject to the restriction that the co-opted members shall not have a right of vote at any meeting of the Committee ; and

(h) giving effect to the agreement, if any, arrived at under the provisions of clause (a) of sub-section (1) of Section 5 and of Section 9 between His Highness the Maharaja of Tehri and the [State Government]².

(3) The Government may by notification delegate to any authority subordinate to it any one or more of the powers conferred by this Act.

(4) The powers to make rules under this section shall be subject to the condition of previous publication.

27. Transitory provision—(1) The [State Government]³ may, after the commencement of this Act and before the constitution of the Committee, appoint one or more persons for a period not exceeding six months to discharge all or any of the duties of the Committee :

Provided that the [State Government]³ may extend the period of appointment of such person or persons for a period not exceeding one year.

(2) Any person or persons appointed under sub-section (1) shall have all the rights and powers except those conferred by the proviso to Section 2, and be subject to all the liabilities which a Committee possesses or is subject to under this Act.

³[SCHEDULE I

- (1) Shri Shankaracharya Temple at Badrinath.
- (2) Shri Adi Kedareshwar Temple at Badrinath.
- (3) Shri Ballabhacharya Temple at Badrinath.
- (4) Taptakund, the tank and the spring at Badrinath.
- (5) Brahmakapal, the Shila and the compound (Parikrama) at Badrinath.
- (6) Matamurti Temple at Badrinath.
- (7) Yogbadri Temple at Pandukeshwar.
- (8) Bhavishya Badri Temple at Subhain.
- (9) Nrishinha Temple at Joshimath.
- (10) Basudeb Temple at Joshimath.
- (11) Shri Durga Temple at Joshimath.

1. *Subs.* by the A. O. 1950 for [Prov].
 2. *Subs.* by *ibid* for (Prov. Govt.)
 3. The Schedule add. by S. 3 of U. P.

Act IV of 1948 was renumbered
 as 'Schedule 1' by S. 9 of U. P. Act
 XXX of 1948.

- (12) Rajrajeshwari Temple at Joshimath.
- (13) Mahadeo Temple at Joyteshwar.
- (14) Bhaktabatsal Temple at Joyteshwar.
- (15) Narayan Temple at Vishnuprayag.
- (16) Sitadebi Temple at Chain.
- (17) Bridhabadri Temple at Ahimath.
- (18) Dhyanbadri Temple at Urgam.
- (19) Shri Nrisingh Temple at Pakhi.
- (20) Shri Nrisingh Temple at Darmi.
- (21) Shri Lakshminarayan Temple at Nandprayag.
- (22) Shri Lakshminarayan Temple at Kulsari.
- (23) Shri Lakshminarayan Temple at Dwarahat, Almora.
- (24) Shri Lakshminarayan Temple at Gudsir, Almora.
- (25) Shri Lakshminarayan Temple at Bayala, Almora.
- (26) Panch Shilas within the Badrinath Puri.
- (27) Panch Dharas within the Badrinath Puri.
- (28) Dharamshila within the Parikrama of Shri Badrinath Temple.
- (29) Basudhara and Dharamshila at the bottom of the fall at Basdhara].

¹[SCHEDULE II]

(See clause (a) of Section 3)

- (1) Udag Kund at Kedarnath.
- (2) Minor temples within the precincts of Shri Kedarnath temple.
- (3) The temple of Shri Vishwanth Ji at Guptakashi.
- (4) Minor temples within the precincts of temples of Shri Vishwanth Ji at Guptakashi.
- (5) The temple of Shri Usha at Ukhimath.
- (6) The temple of Shri Barahi at Ukhimath.
- (7) The temple of Shri Madmasheshwar at Madmasheshwar.
- (8) The temple of Shri Maha Kali at Kalimath.
- (9) The temple of Shri Mahalaxmi at Kalimath.
- (10) The temple of Shri Maha Saraswati at Kalimath.
- (11) The temple of Shri Gauri Mayi at Gaurikund.
- (12) The temple of Shri Narain at Trijuginarain.
- (13) Minor temples within the precincts of the temple of Shri Narain Trijuginarain.
- (14) The temple of Shri Tunganath at Tunganath.
- (15) The temple of Shri Tunganath at Makku.
- (16) The temple of Shri Kalshila at Kalshila.

1. Add. by S. 9 of U. P. Act XXX of 1948.

RULES UNDER SHRI BADRINATH TEMPLE ACT, 1939

Published in U. P. Gazette, dated August 24, 1940, Pt. I-A. pp. 522-525 under notification No. 961/XVI (P. H.)—H. C. E. dated August 22, 1940.

CONTENTS

Sections

- | | | | | |
|--|---|---|---|---|
| CHAPTER I
PRELIMINARY <ul style="list-style-type: none"> 1. Short title and commencement. 2. Definitions. | CHAPTER II
ELECTIONS AND ELECTION PETITIONS <ul style="list-style-type: none"> 3. Extent of application of Chapter II. 4. Time of election. 5. Place of election. 6. Voters. 7. Qualification of a candidate. 8. Number to be elected from Tehri State. 9. Returning Officer. | NOMINATION <ul style="list-style-type: none"> 10. Nomination. 11. Withdrawal by candidates. 12. Scrutiny of nomination papers. 13. Result of nomination. | VOTING <ul style="list-style-type: none"> 14. Voting. 15. Procedure in taking votes. 16. Validity or invalidity of votes. 17. Counting of votes and declaration of result. 18. Custody and inspection of documents. | ELECTION DISPUTES <ul style="list-style-type: none"> 19. Tribunals. 20. Period of limitation and authority |
|--|---|---|---|---|

Sections

- | | |
|--|--|
| <ul style="list-style-type: none"> to whom election petition is to be presented. 21. Contents of petition. 22. Powers and procedure of Tribunals. 23. Government's power to cure irregularities. | CHAPTER III
SECRETARY <ul style="list-style-type: none"> 24. Government's approval for appointment. 25. Qualifications. 26. Disqualifications. 27. Power to waive the conditions. 28. Tehri servant's appointment. 29. Probation. 30. Pay. 31. Termination of service during probation. 32. Discharge. 33. Punishments. 34. Procedure. 35. Suspension. 36. Subsistence allowance. 37. Special rules of punishment for servants of the Central Government. 38. Appeals. |
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FORMS

CHAPTER I

PRELIMINARY

1. Short title and commencement.—(1) These rules may be called the [Uttar Pradesh] Shri Badrinath Temple Rules, 1940.

(2) They shall come into force on the date on which they are published in the Official *Gazette* in their form.

2. Definitions.—In these rules unless there is anything repugnant in the subject or context—

- (a) “Act” means the [Uttar Pradesh] Shri Badrinath Temple Act, 1939 (XVI of 1939).
- (b) “Assembly” means the [Uttar Pradesh] Legislative Assembly.
- (c) “Council” means the [Uttar Pradesh] Legislative Council.
- (d) “Government” means the Government of [Uttar Pradesh].
- (e) “His Highness” means His Highness the Maharaja of Tehri-Garhwal State.

CHAPTER II

ELECTIONS AND ELECTION PETITIONS

[See Section 26 (2) (b) and (h).]

GENERAL

3. Extent of application of Chapter II.—The rules in this Chapter apply to General elections as well as to elections to fill casual vacancies in the Shri Badrinath Temple Committee.

4. Time of election.—(1) The first election to the Committee shall be held within such time or further time as Government may fix.

(2) Subsequent elections shall be held within three years of the date of the notification publishing the result of the last election under sub-section (3) of Section 5 of the Act and within such time or further time as Government may fix.

5. Place of election.—The place of election shall, in the case of an election—

- (a) under clause (a) of sub-section (1) of Section 5 of the Act, be such as may be fixed by His Highness;
- (b) under clause (b) of sub-section (1) of Section 5 of the Act, be the office of the District Board of Garhwal; and
- (c) under clause (c) of sub-section (1) of Section 5 of the Act, be the Hindu members of the Council or the Assembly according as the election is by the Hindu members of the Council or the Assembly.

6. Voters.—The voters shall, in the case of an election—

- (a) under clause (a) of sub-section (1) of Section 5 of the Act, be the Hindu members of the Tehri State Representative Assembly;
- (b) under clause (b) of sub-section (1) of Section 5 of the Act, be the Hindu members of the District Board of Garhwal; and
- (c) under clause (c) of sub-section (1) of Section 5 of the Act, be the Hindu members of the Council or the Assembly according as the election is by the Hindu members of the Council or the Assembly.

7. Qualification of a candidate. (1) No person who does not profess the Hindu religion and accept the form of worship practised at the Temple shall be eligible for election under this Chapter.

(2) A candidate for election under clause (a) of sub-section (1) of Section 5 of the Act shall be a resident of Tehri State, a candidate for election under clause (b) of the said sub-section shall be a resident of the Garhwal District but need not necessarily be a member of the Garhwal District Board and a candidate for election under clause (c) of the said sub-section may not be a member of the Assembly or the Council.

8. Number to be elected from Tehri State. Of the three members of the Committee from the Tehri State under clause (a) of sub-section (1) of Section 5 of the Act, at least one shall be elected by the Tehri State Representative Assembly and the rest shall be nominated by His Highness in such manner as he may deem fit.

9. Returning Officer.—The Returning Officer shall, in the case of an election—

- (a) under clause (a) of sub-section (1) of Section 5 of the Act, be the Secretary of the Tehri State Representative Assembly, or in his absence, any officer performing his duties for the time being;
- (b) under clause (b) of sub-section (1) of Section 5 of the Act, be the Secretary of the District Board of Garhwal, or in his absence, any person performing his duties for the time being; and
- (c) under clause (c) of sub-section (1) of Section 5 of the Act, be the Secretary of the Council in elections by the Hindu members of the Council; and the Secretary of the Assembly in elections by the Hindu members of the Assembly and in their absence any officer performing their duties for the time being.

NOMINATIONS

10. Nomination.—(1) On receipt of a requisition from the Government the Returning Officer concerned shall, having regard to the time fixed by the Government under rule 4, appoint—

- (a) the date for the receipt of nomination papers, not earlier than fourteen days from the date on which he sends the letter referred to in sub-rule (2) to the voters.
 - (b) the date and time for scrutiny of nominations;
 - (c) the date for the receipt of ballot papers if the results of nomination so necessitate; and
 - (d) the date and time for the scrutiny and counting of votes.
- (2) The Returning Officer shall by a letter either sent by post of which a postal certificate shall be taken, or delivered to the voter at his address as maintained in the office of the Returning Officer, inform each voter of the programme fixed under sub-rule (1) and call upon to nominate in Form A as many persons as there are seats to be filled. He shall also send with such letter as many nomination papers as there are vacancies.

(3) Each nomination shall be made in writing in Form A signed by two voters as proposer and seconder and scribed by the candidate, assenting to the nomination and making the declaration prescribed in the form.

(4) On or before the date appointed for nominations, each candidate or his proposer or seconder may either personally deliver the nomination paper to the Returning Officer or send it by registered post so as to reach the Returning Officer before the expiry of the date fixed for nominations.

11. Withdrawal by candidates.—A candidate may withdraw his candidature by notice in writing scribed by him and delivered to the Returning Officer before the time fixed for the scrutiny of nominations. A candidate who has withdrawn his candidature shall not be allowed to cancel the withdrawal.

12. Scrutiny of nomination papers.—At the time fixed for the scrutiny of nominations, the Returning Officer shall examine the nomi-

nation papers and shall decide as to their validity. Candidates and their proposers and seconds may be present at the time of the scrutiny.

13. Result of nomination.—(1) If the number of candidates, who are duly nominated and who have not withdrawn their candidature in accordance with rule 11 exceeds the number of the vacancies, votes shall be taken.

(2) If the number of such candidates is equal or less than the number of vacancies, all such candidates shall be declared to be duly elected and the Returning Officer shall report the result in accordance with rule 17.

VOTING

14. Voting.—(1) Each voter shall have votes equal to the number of members to be elected, but he shall not give more than one vote to any candidate.

(2) He shall vote by placing or causing to be placed a cross (\times or +) opposite the name or names of the candidates whom he prefers.

(3) The ballot paper shall be invalid if the cross (\times or +) is placed opposite the names of more candidates than are to be elected.

(4) If the cross (\times or +) is so placed as to render it doubtful to which candidate such mark is intended to apply, the vote shall be invalid.

15. Procedure in taking votes.—(1) After the scrutiny of nomination papers the Returning Officer shall, as soon as may be, by a letter, either sent by registered post or delivered to the voter at his address as maintained in the office of the Returning Officer, call upon each voter to record his vote and along with it send a ballot paper in Form B signed by himself and also an envelope bearing on the face the serial number and the words "Shri Badrinath Temple Ballot Paper", but addressed to himself. Each voter shall have a serial number and the same number shall be marked on the ballot paper.

(2) Should an original ballot paper be lost, mislaid, spoilt, destroyed or otherwise rendered useless, the voter to whom it was issued shall, on application in writing addressed to the Returning Officer, stating the circumstances, be supplied with a second ballot paper signed and numbered by the Returning Officer as provided in the last preceding sub-rule and marked duplicate which, in the absence of the original ballot paper bearing the same number, shall be treated as if it were the original.

(3) On receipt of such ballot paper, every voter desirous of recording his votes shall appear before the Returning Officer or a Magistrate or a Judge, record his votes in accordance with rule 14 on the ballot paper and sign it in his presence and obtain his signature in attestation thereof :

Provided that no such attestation is required in the case of an election by the Hindu members of the District Board of Garhwal under clause (b) of sub-section 5 of the Act.

(4) The voter shall then place the ballot paper in the envelope provided for the purpose and after closing it shall either hand it over in person to the Returning Officer or send it to him by registered post,

affixing thereto the necessary postage stamps. The ballot paper must reach the Returning Officer on or before the date fixed for the receipt of voting papers.

16. Validity or invalidity of votes.--(1) Unless the instructions contained in these rules as regards the manner of voting are complied with and the necessary particulars filled in, the ballot papers shall be invalid.

(2) If a ballot paper has been issued to a voter in accordance with these rules, no election shall be rendered invalid by reason of his not having received the ballot paper.

17. Counting of votes and declaration of result. (1) On the date and at the time fixed under rule 11 (1) (d), the Returning Officer shall scrutinize the ballot papers received on or before the date fixed, reject the invalid ones, count the valid ones, declare the result then and there and report it to the Secretary to Government in the Public Health Department as soon as possible. Only candidates and their proposers and seconders may be present at the time of the counting of votes.

(2) In case of equality of votes, the Returning Officer shall decide the question by drawing lots.

18. Custody and inspection of documents.—The nomination papers of candidates, ballot papers and all other papers relating to nominations and voting shall be sealed and kept in the office of the Returning Officer and shall be destroyed after one year from the date of the declaration of the result. Such papers shall not be open to inspection except by order of an election tribunal.

ELECTION DISPUTES

19. Tribunals.—The tribunal for deciding a dispute relating to an election under the Act shall, in the case of an election—

- (a) under clause (a) of sub-section (1) of Section 5 of the Act, be such authority as His Highness may appoint,
- (b) under clause (b) of sub-section (1) of Section 5 of the Act, be the Deputy Commissioner-in-charge of the Kumaun Division; and
- (c) under clause (d) of sub-section 1 of Section 5 of the Act, be such authority as the Government may appoint.

20. Period of limitation and authority to whom election petition is to be presented—Within thirty days of the date of the notification of the result of the election under sub-section 3 of Section 5 of the Act, the candidate or his proposer or seconder may present in person or by registered post a petition in respect of the election to the Returning Officer concerned and along with it, shall enclose a receipt showing that a deposit of rupees two hundred has been made in a Government or a Tehri State Treasury, as the case may be, as security. The Returning Officer shall forward the petition to the authority concerned appointed under rule 19.

21. Contents of petition.--(1) The petition shall be drawn up in the form of a plaint as required by the Code of Civil Procedure (V of 1908) and shall specify with sufficient details the ground or grounds on which the election of the respondent is questioned.

(3) The petitioner may, if he so desires in addition to calling in question the election of the returned candidate, claim a declaration that he himself or any other candidate has been duly elected, in which case he shall join as respondent the other candidates who were duly nominated at the questioned election.

22. Powers and procedure of Tribunals. (1) The Tribunal shall summarily dismiss the petition if it is not drawn up in the prescribed form or has not been presented within the prescribed time. In the event of the petition not being so dismissed, the Tribunal shall fix a date and place for inquiry, inform the parties of the same, take such evidence as they may adduce and decide the case. It shall follow such procedure as may appear to it to be equitable and shall have the same powers to enforce the attendance of witnesses and the production of documents and to examine witnesses on oath as the Civil Courts have under any law for the time being in force.

(2) The Tribunal shall have power to pass such orders on the petition including orders as to costs as may in its opinion be required in the interest of justice, equity and good conscience. If it finds an election petition to be frivolous and vexatious, it may direct that after the costs, if any, awarded to the opposite party have been recovered from the security money, the balance if any, shall be forfeited to the Temple.

(3) The decision of the Tribunal shall be final and the [State] Government shall take such action as may be necessary to give effect to it.

(4) The Tribunal shall after pronouncing judgment forward the whole record to the Government as soon as possible.

23. Government's power to cure irregularities.—Notwithstanding anything in these rules in case of an irregularity in the conduct of an election under these rules, the Government may make such order, consistent with the Act, as may appear to it to be just and proper.

— — —

CHAPTER III

[See Sections 14, 15 and 26 (d) of the Act].

Added by Public Health Department, Miscellaneous No. 1155/XVI (P. H.) 84 (2), dated November 5, 1941, published in the U. P. Gazette, dated November 8, 1941, Part I-A., pp. 336—337.

SECRETARY

24. Government's approval for appointment.—Every appointment of the Secretary made by the Committee under Section 14 of the Act shall be subject to the previous approval of the Government:

Provided that no such approval shall be necessary if the appointment of a Secretary is made for a period not exceeding two months.

25. Qualifications.—No person shall be appointed as Secretary unless—

(a) he professes the Hindu religion and accepts the form of worship practised at the temple;

- (b) he holds a degree in Arts, Law, Science or Commerce of a University established by law and can read and write Hindi fluently;
- (c) he is medically fit for outdoor work and knows riding;
- (d) he is a permanent resident of the [Uttar Pradesh]; and
- (e) he is not less than 30 years of age on the date of his appointment.

26. Disqualifications.—A person shall be disqualified for appointment as Secretary—

- (a) if he or any of his relations is the President or a member of the Committee which proposes to appoint him;
- (b) if he or any of his relations by himself or partner, has any interest directly or indirectly in any contract with, or employment under, the Committee;
- (c) if he was dismissed from the service of the [Central Government] Part B States or any local authority, and
- (d) if he has undergone a sentence of imprisonment for a criminal offence involving moral turpitude.

Explanation.—For the purpose of this rule, relation means father, grand-father, father-in-law, paternal or maternal uncle, son, grandson, son-in-law, brother, brother's son, first cousin paternal or maternal, wife's brother, or sister's husband.

27. Power to waive the conditions.—Subject to the approval of the Government, the Committee may in any special case waive one or more of the qualifications specified in clause (d) to (e) of rule 25, or of the disqualifications specified in rule 26.

28. Tehri servant's appointment.—Notwithstanding the provisions of clause (d) of rule 25, and subject to the other provisions of that rule and the provisions of rule 26, a person in service of His Highness may be appointed as Secretary on conditions approved by the Government and agreed upon between the Committee and His Highness.

29. Probation.—Every appointment of the Secretary shall be made on one year's probation, unless the Committee otherwise directs.

30. Pay.—The appointment of a Secretary shall be made on such time-scale of pay, with an efficiency bar at a suitable stage, as may be approved by the Government.

31. Termination of service during probation.—The Committee may, by a majority of votes, terminate the services of a Secretary, while on probation, without assigning any reason.

32. Discharge.—The Committee may discharge a permanent Secretary on three months' notice or on payment of a sum equal to three months' pay in lieu thereof.

33. Punishments.—The Committee shall have the power to inflict the following punishments on its Secretary, namely—

- (a) censure,
- (b) withholding of increments,
- (c) reduction in pay,

- (d) recovery from pay of the whole or part of any pecuniary loss caused to the Temple by negligence or breach of orders,
- (e) suspension,
- (f) removal from service which does not disqualify him for future employment,
- (g) dismissal from service which ordinarily disqualifies him for future employment.

(2) In the case of a permanent Secretary the order of punishment shall not be valid unless passed by a resolution supported by not less than two-thirds of the members, including the President, constituting the Committee.

34. Procedure. - No order of punishment of a permanent Secretary, other than an order based on facts which have led to his conviction in a criminal court, shall be passed unless he has been informed in writing of the grounds on which it is proposed to take action, and has been afforded an adequate opportunity of defending himself. The grounds on which it is proposed to take action shall be reduced in the form of a definite charge or charges, which shall be communicated to the Secretary together with a statement of the allegations on which each charge is based and of any other circumstances which it is proposed to take into consideration in passing orders in the case. He shall be required, within a reasonable time, to put in a written statement and to state whether he desires to be heard in person. If he so desires or if the Committee so directs, an oral inquiry shall be held by the President of the Committee. At that inquiry oral evidence shall be heard as to such of allegations as are not admitted, and he shall be entitled to cross-examine the witnesses, to give evidence in person and to have such witnesses called, as he may wish ; provided that the President may, for special and sufficient reason to be recorded in writing, refuse to call a witness. The proceedings shall contain sufficient record of evidence and a statement of the findings and the grounds thereof.

(2) A similar procedure may, at the discretion of the Committee, be followed before an order of punishment is passed on a Secretary whose appointment is probationary or temporary.

35. Suspension.—Notwithstanding anything to the contrary in the last preceding rule, the President may, in exceptional cases for sufficient reason to be recorded in writing, suspend a Secretary pending an enquiry at any time and immediately proceed with the investigation of the charge or charges against him ; provided that the approval of the Committee to this action is taken within three months of the date of his order.

36. Subsistence allowance.—When Secretary is suspended, he may be given by the Committee a subsistence allowance for the period of suspension. The amount of such allowance shall not exceed one-fourth of his pay.

37. Special rules of punishment for servants of the Central Government.—(1) Notwithstanding anything to the contrary in these rules, the Committee shall not punish a Secretary whose services have been lent to it by the Government, save in accordance with the provisions of this rule.

(2) The Committee shall :

- (a) frame a charge and at once give a copy of the charge to the Secretary;
- (b) record his defence and such evidence as may be necessary;
- (c) record a finding as to the facts established;
- (d) embody its order in a resolution; and
- (e) forward the resolution with the record of the proceeding to the Government.

(3) The Government may make such further enquiry and record such further evidence as it thinks necessary and, after affording an opportunity to the Secretary to defend himself, shall issue such directions to the Committee as it may deem suitable and the Committee shall comply with the same.

38. Appeals.—(1) The Secretary may appeal to the Government against any order of punishment passed by the Committee.

(2) The appeals shall:

- (a) contain all material statements and arguments relied on by the appellant;
- (b) not be written in disrespectful or improper language;
- (c) be submitted through the President; and
- (d) be filed within 30 days of the communication to the appellant of the order appealed against.

FORM A

NOMINATION PAPER

(See rule 10)

Nomination of a candidate for election under Section 5 of the [Uttar Pradesh] Badrinath Temple Act, 1939 (XVI of 1939).

1. Name of candidate nominated
2. Full address of the candidate nominated
3. Does the candidate profess the Hindu religion and does he accept the form of worship practised at Shri Badrinath Temple in Garhwal?
4. Signature in full of the proposer with date
5. Signature in full of the seconder with date

DECLARATION BY THE CANDIDATE

I hereby declare that I agree to this nomination, profess the Hindu religion and accept the form of worship practised at the Temple of Shri Badrinath in Garhwal.

Signature in full of the candidate

3

—

m

(To be filled in by the Returning Officer)

This nomination paper was received by me on 19,

Returning Officer.

CERTIFICATE OF SCRUTINY

I have scrutinized the eligibility of the candidate, the proposer and the seconder [and find that they are respectively qualified to stand for election, to propose and to second the nomination and that the nomination is valid.]

Date

Returning Officer.

Note. If the Returning Officer holds that the nomination is not valid, the words within the square brackets will be scored out by him and he shall record his finding with reasons.

INSTRUCTIONS

1. Nomination shall be made in writing on the form signed by two voters as proposer and seconder and scribed by the candidate himself as assenting to the nomination and making a declaration in terms of sub-section (2) of Section 5 of the Act.

2. On or before the date appointed for the nomination of candidates, each candidate or his proposer or seconder may either personally deliver the nomination paper to the Returning Officer or send it by registered post so as to reach the Returning Officer before the expiry of the time fixed for nomination.

FORM B

ELECTION UNDER SECTION 5 OF THE [UTTAR PRADESH] ACT XVI OF 1939

BALLOT PAPER

[See rule 15 (3) and (4)]

Serial number of voter
number.....Name of the candidates.....Vote (X or +)

Serial

1

2

Signature of the voter

Place where signed

Date

Attested by me

Signature of the person attesting

Designation

Date

INSTRUCTIONS

1. On receipt of such ballot paper, every voter desirous of recording his votes shall appear before the Returning Officer or a Magistrate or a Judge, record his vote, sign the ballot paper in his presence, and obtain his signature in attestation thereof. But such attestation is not required in the case of an election by the Hindu members of the District Board of Garhwal.

2. Each voter shall have as many votes as there are members to be elected, but shall not give more than one vote to any candidate.

3. He shall vote by placing or causing to be placed a cross (\times or +) opposite the name of the candidate whom he prefers.

4. The ballot paper shall be invalid if the cross (\times or +) is placed opposite the name of more candidates than are to be elected.

5. If a cross (\times or +) is so placed as to render it doubtful to which candidate such mark is intended to apply, the vote shall be invalid.

6. The voter shall then place the ballot paper in the envelope provided and after closing it shall either hand it over in person to the Returning Officer or send it to him by registered post affixing thereto the necessary postage stamps. The ballot paper must reach the Returning Officer on or before the date fixed for voting.

THE BENARES FAMILY DOMAINS ACT, 1904

(U. P. Act No. III of 1904)

CONTENTS

Sections.

PART I

PRELIMINARY

1. Short title and extent.
2. Definitions.
3. Exemption of Family Domains from Act III of 1878 and Act, XIV of 1883.

PART II

ASSESSMENT, RECOVERY, AND DISPOSAL OF RATES

4. Amount of rate.
5. Levy of rate.
6. Payment of rate by tenants.

Sections.

7. Payment of rate by inferior proprietors.
8. Appeal to Superintendent.
9. Bar of suits in Civil Court.
10. Credit of rates to a fund.
11. Administration of fund.
12. Exemptions.
13. Power to make rules
14. Reference to Raja

PART III

RECOVERY OF CERTAIN DEMANDS

15. Raja of Benares to be deemed a Collector under Section 3, Revenue Recovery Act, 1890.

[Received the assent of the Lieutenant-Governor on the 13th August, 1904, and of the Governor-General on the 1st November, 1904, and was published¹ under Section 40 of the Indian Councils Act 1861, on the 17th December, 1904.]

An Act to provide for the imposition of rates on land in the Family Domains of the Raja of Benares and for the recovery of certain demands payable in the said Domains.

Whereas it is expedient to exempt by law the Family Domains of the Raja of Benares from the operation of the laws for the time being in force relating to the imposition of rates on land and the disposal of the proceeds of such rates; and to make special provision for the assessment and realization of rates on land held by tenants in the said Family Domains, and for the disposal of the proceeds of such rates;

And whereas it is also expedient to make better provision for recovering certain demands payable in the Family Domains;

It is hereby enacted as follows :

Prefatory Note :—For S. O. R., see Gaz., 1904, Pt. VI, p. 10; for discussion, see L. C. Pro. in *ibid.*, 1904, Pt. VI, pp. 65 and 86.

1. See Gaz. 1904, P. VI, pp. 89-94.

PART I
PRELIMINARY

1. Short title and extent.—(1) This Act may be called the Benares Family Domains Act, 1904.

(2) [It shall extend to the whole of Uttar Pradesh].²

2. Definitions—In this Act, unless there is anything repugnant in the subject or context,—

(1) the expression “annual value” means—

(a) The cash rent recorded in the patwaris’ records as payable by a tenant, or

(b) in cases where the rent is paid in kind or where land is held rent-free or at nominal rates of rent or is cultivated by the inferior proprietor himself, the rent which would be payable at prevailing rates by occupancy tenants for land of similar quality and with similar advantages :

(2) the expression “interior proprietor” includes a mukarraridar, a manzuridar, and a holder of a revenue-free mahal ;

(3) the expression “land” means land which is let or held by a tenant for agricultural purposes, and land cultivated by an inferior proprietor himself with his own stock or by his servants or by hired labour ;

(4) the expression “rent” means whatever is, in cash or kind, to be paid or delivered by a tenant for land held by him ;

(5) the expression “tenant” means a person by whom rent is, or but for a contract, express or implied, would be payable to the Raja of Benares or to an inferior proprietor, and

(6) the expression “tenant at fixed rates” means a tenant holding land the rent of which under the laws in force or the customs prevailing in the Family Domains is not liable to enhancement, but does not include a tenant paying rent in kind.

3. Exemption of family Domains from Act XII of 1878 and Act XIV of 1883.—The ³Agra Local Rates Act, 1878, and the ⁴United Provinces Local Boards Act, 1883, shall not apply to the Family Domains.

PART II
ASSESSMENT RECOVERY AND DISPOSAL OF RATES

4. Amount of rate.—All land situated in the Family Domains shall be liable to the payment of such rate as the [State Government]⁵ may declare by notification ⁶ in the [Official Gazette]⁷ to be payable, not exceeding—

(a) five per cent on the annual value in the case of the land

- 2. Subs. for sub-sec. (2) of S. 1 by the A. O. 1950.
- 3. Rep. by U. P. Act I of 1914.
- 4. Rep. by U. P. Act III of 1906.
- 5. Subs. by the A. O. 1950 for [Prov. Govt.] which had been subs. by

- the A. O. 1937 for [L. G].
- 6. See not. no. 591/I—597-B, d. March 5, 1907, in *Gaz.* 1907, P. I, p. 68.
- 7. Subs. for [Gazette] by the A. O. 1937.

of a tenant at fixed rates, a rent-free tenant, and an inferior proprietor cultivating his own land;

(b) three and a half per cent on the annual value in the case of every other tenant.

5. Levy of rate.—The rate notified under Section 4 shall be levied by the Raja of Benares and the assessment of such rate shall be made through the channel of the Raja.

6. Payment of rate by tenants.—The amounts assessed under Section 5 shall be paid by the tenants of the Raja of Benares and of inferior proprietors to the said Raja and to the said inferior proprietors respectively who may recover arrears of such amounts as if they were arrears of rent.

7. Payment rate by inferior proprietors.—The amounts assessed on the land of tenants of an inferior proprietor less 20 per cent deducted as costs of collection, and on the land cultivated by an inferior proprietor himself, shall be paid by the said proprietor to the Raja of Benares, who may recover arrears of such amounts as if they were arrears of land revenue.

8. Appeal to Superintendent.—(1) In matters connected with the assessment and collection of any sum leivable under this Act, an appeal shall lie to the Superintendent of the Family Domains from the order of any person empowered by rules made under this Act to assess or collect the rate;

Provided that such appeal be presented within sixty days from the date of the order.

(2) The Superintendent's decision on such appeal shall be final, but shall be open to revision by the Board of Revenue.

9. Bar of suits in Civil Court.—No suit shall lie in any Civil Court to set aside or modify any assessment made under this Act.

10. Credit of rates to a fund.—All rates realized by the Raja of Benares under Part II of this Act shall be credited by him to a separate fund to be called the Family Domains Local Rates Fund.

11. Administration of fund.—The administration of the said fund shall, subject to any rules made under section 22, Bengal Regulation VII of 1828, be entrusted to the Raja of Banaras.

Notes:—See Not. no. 596/I—596B, dated March 5, 1907, and no. 1655/I—553 dated August 11, 1910, in Gazette, 1907, Pt. I, p. 168, and *idid* 1910, Pt. I, pp. 835-836.

Note:—See Benares Family Domains Regulation, 1829.

12. Exemptions.—The [State Government] may, by notification in the [Official Gazette], exempt any land or class of land or any class of tenant from liability to pay the whole or any part of the rate notified under Section 4 and may cancel such exemption.

Note:—The following lands have been exempted:—

(1) Lands in Pargana Bhadohi—Notification No. 591/I-597 B dated 5th March, 1907 and notification No. 1655/I-553 dated 11th August, 1910 published in U. P. Gazette Part I, page 835.

(2) Jagirs held by Chowkidars—Notification No. 596/I-597B dated 5th March, 1907 published in the U. P. Gazette, 1907 Part I, page 168.

13. Power to make rules.—(1) The [State] Government may make rules to carry out any of the purposes and objects of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may—

- (a) prescribe the method of ascertaining the annual value of land and of determining whether a tenant is holding land at a nominal rate of rent or not;
- (b) provide for the determination of the class to which a tenant belongs in cases where the character of the tenure of land is doubtful;
- (c) prescribe by whom the rate shall be assessed and collected, and by what instalments and at what times the amounts due under Sections 6 and 7 shall be payable; and
- (d) regulate the procedure in all cases under this Act.

(3) All rules made by the [State] Government under this Act shall be published in the [Official Gazette] and shall thereupon have effect as if enacted in this Act.

Note:—For rules, see Not. no. 601/1—497 B. dated March 5, 1907 in *Gazette*, 1907, Part I, page 168.

14. Reference to Raja.—No notification or rule shall be published under Sections 4, 12 and 13 until the opinion of the Raja of Benares thereon has been taken and considered by the [State] Government.

PART III RECOVERY OF CERTAIN DEMANDS

15. Raja of Benares to be deemed a Collector under Section 3, Revenue Recovery Act, 1890.—(1) Notwithstanding anything contained in the Revenue Recovery Act, 1890, for the purposes of Section 3 of that Act, the Raja of Benares shall be deemed to be a Collector.

(2) The Raja may, in accordance with the provisions of the said section, send a certificate to the Collector of a district outside the Family Domains for the recovery of an arrear of land revenue or of a sum recoverable as an arrear of land revenue payable to him, and similarly, on receiving a certificate from a Collector of a district outside the Family Domains, the Raja shall proceed to recover the amount stated therein as if it were an arrear of land revenue which had accrued in the Family Domains.

Rules under Benares Family Domains Act, 1904

[Published in U. P. Gazette, dated October 6, 1923, Pt. I, p. 1410 under Revenue Notification No. 71361 A-212 dated 4th October, 1923]

RULES

1. In these rules, unless there is anything repugnant in the subject or context, the "Act" means the Benares Family Domains Act, 1904 (Uttar Pradesh III of 1904), and the term "Maharaja" means the Raja of Benares as referred to in that Act.

2. The assessment of the rate and in case where the rent of land subject to the rate is not entered in the Patwari's records or the rent so recorded is a grain rent or a nominal rent or where an inferior proprie-

tor cultivates his own land, the determination of the annual value shall be made by such officer (hereinafter called the assessing officer) as may be appointed by the Collector of Benares with the sanction of the Commissioner.

3. (1) For each village an assessment list shall be maintained, specifying for each holding—

- (a) the name of the tenant or cultivating inferior proprietor,
- (b) the area and annual value of the holding determined in accordance with Section 2, clause (1) of the Act, and
- (c) the amount of the rate assessed.

(2) The assessment list shall be revised every ten years.

4.—(1) Whenever—

- (a) the amount of the rate payable on a holding is altered, or
- (b) an annual value is determined under Section 2, clause (1) sub-head (b) of the Act, an extract from the assessment list showing the amount of rate payable and the method of calculation shall be served on the tenant or cultivating inferior proprietor concerned.

Such notice may be served either by tendering, delivering or sending a copy thereof by post, in a cover registered under the Indian Post Office Act, 1898, to the person on whom it is to be served, or by affixing a copy thereof at some place of public resort, on or adjacent to the land to which such notice refers.

5. Every person on whom a notice has been served under rule 4 may within a month of the service of the notice, file an objection before the assessing officer.

6.—(1) The Patwari shall enter in his Jamabandi the amount of rate payable in accordance with the assessment list.

(2) All notifications and alterations shall be communicated to him through the Registrar Qanungo, and such modifications and alterations shall be entered by him in his Jamabandi.

(3) The annual value of the lands enumerated in Section 2, clause (1) sub-head (a) of the Act shall be recorded in the remarks column.

(4) The Patwari shall also report to the assessing officer all cases where the area, rental or cultivation in occupation of a holding has undergone alteration or an annual value requires to be determined.

(5) All such reports, before submission, shall be verified and signed by the Supervisor Qanungo of the circle.

7. A tenant shall be considered to hold at the nominal rate of rent when he is not a tenant at fixed rates and his recorded rent is less than half that paid by occupancy tenants for land of similar quality and advantages in the neighbourhood.

8. The following classes of tenants shall be considered to hold at fixed rates, namely :—

- (1) Kabal hal hasil,
- (2) Salisi, and
- (3) Shara muaiyan.

9. The following classes of tenants shall be considered to be occupancy tenants, namely :—

(1) occupancy tenants ;

(2) bad hal hasil tenants and maurusi tenants other than those mentioned in rule 8.

10. When the annual value has to be fixed in accordance with the rent which would be payable at prevailing rates by occupancy tenants for land of similar quality and similar advantages, and the occupancy area in the village in which the land is situated is nil or very small, the occupancy rate paid in neighbouring villages shall be considered to be applicable.

11.—(1) In each year, under the order of the assessing officer, or when the assessment is not under revision, under the orders of the Sub-divisional Officer, these shall be compiled from the patwari's records a statement for each mahal in the following form, namely :—

Mahal.	Village.	
Class of tenants.	Area of holding.	Rental or annual value.
1. Tenants at fixed rates		
2. ,,, of rent-free lands		
3. Inferior proprietors cultivating their own lands		
Total		
<i>Assessment at eight pies per rupee</i>		
4. Occupancy tenants		
5. Tenants paying rent in kind		
6. Other tenants		
Total		
<i>Assessment at six pies per rupee</i>		
Grand Total		
Amount to be deducted for costs of collection.		
Amount payable		
Memo.		
Total demand from tenants		Rs.
Total demand from inferior proprietors		

(2) Copies of these statement shall be supplied to the officer-in-charge of the tahsil of the Maharaja situated at Gangapur after attestation by the Qanungo and also to the Collector of Banaras for record in the Banaras Tahsil demand register.

12. The amounts payable by tenants under the Act shall be collected in two equal instalments, which shall be due on the last days of *Aghan* and *Baisakh* respectively.

13. The amount payable under Section 7 of the Act by inferior proprietors to the Maharaja shall be due one month after the dates on which the instalments are due from the tenants.

14.—(1) All receipt for payments on account of the rate and all arrearsals and statement of receipts in which payments on account of the rate are included, shall show clearly the amount paid on account of the rate and the year to which it is to be credited.

(2) Every official entrusted with the collection of the rate shall keep a separate account of payment received on account of the rate.

15. All sums due from the inferior proprietors, after the deduction of 20 per cent, referred to in Section 7 of the Act, shall be paid to the Tahsildar of the Maharia.

16.—(1) All sums so paid, and all sums directly collected by the agents of the Maharaja, shall be paid into the Tahsil treasury referred to in Paragraph II, sub-clause (2).

The officer-in-charge of the Tahsil shall maintain a *khatuna* showing demand and collection on account of the rate in the following form namely :—

Khatauni showing the demand of local rates

No. of mahal.	Name of mehal.	Name of malguzar.	Whole demand.	Deduction for cost of collection.	Balance.	Remarks.

Detail of the amount Realized

(3) The demand shall be copied from the MAHALWAR register prescribed in rule 11, and the collection from the arz-irsals.

17. The officer-in-charge of the tahsil shall show separately in his daily Wazkham (Siaha the amount creditable to the State.)

18. The sums assessed according to the procedure laid down in the foregoing clause shall be collected by the Maharaja and be paid by him into the Government treasury at Benares deducting 15 per cent as costs of collection on all sums not collected through inferior proprietors in equal instalment along with the land revenue of Kaswar Raja.

19. Irrecoverable items may be written off by the Collector of Benares with the concurrence of the Commissioner.

THE BENARES HINDU UNIVERSITY ACT, 1915

(Act No. XVI OF 1915)

CONTENTS

Sections

1. Short title and commencement.
2. Definitions.
3. Incorporation.
4. University open to all classes, of castes and creeds.
5. Powers of the University.
6. Visitor.
7. Chief Rector and Rectors.
8. Officers and authorities of the University.
9. Powers and duties of officers, term of office and filling of casual vacancies.
10. The Court.
11. The Executive Council.
12. The Academic Council.
13. The Standing Committee of the Academic Council.
14. Permanent reserve to cover recurring charges.
15. Maintenance and admission to privileges of colleges.
16. Recognition of degrees.
- 16-A. Pension or Provident Fund.
17. Statutes.
18. Ordinances.
19. Power to make Regulations.
- 19-A. Conditions of Service of officers and teachers.
20. Dissolution and transfer of property of the Hindu University Society.

Sections

4. The Chancellor.
5. Powers of the Chancellor.
6. The Pro-Chancellor.
7. Powers of the Pro-Chancellor.
8. The Vice-Chancellor.
9. Powers of the Vice-Chancellor.
10. The Pro-Vice-Chancellor.
11. Powers of the Pro-Vice-Chancellor.
12. The Treasurer.
13. The Registrar.
14. The Court.
15. [Repealed].
16. Meetings of the Court.
17. The Executive Council.
18. Powers of the Executive Council.
- 18-A. [Repealed].
19. The Academic Council.
20. Powers of the Academic Council.
21. Standing Committee of the Academic Council.
22. Duties of the Standing Committee of the Academic Council.
- 22-A. Finance Committee.
23. The Faculties.
24. Constitution of Faculties.
25. Appointment and term of office of the Dean and Members of Faculties.
26. Powers of the Faculties.
- 26-A. Constituents of the Faculties.
- 26-B. The establishment and abolition of colleges and institutions.
- 26 C. Privileges of Colleges and other Institutions.
27. Convocations.
28. Committee.
29. Selection Committee.
- 29-A. Alumni Association.
30. Acts during vacancies.
31. Elected Chairman to preside

SCHEDULE I

First statutes of the University

1. Definitions.
2. [Repealed].
3. Rectors.
- 3-A. Officers of the University.
- 3-B. Appointment of Librarian, Provosts and Chief Proctor.

Sections.

- where no provision made by the Statutes.
32. Re-appointment and re-election.
33. Resignation.
34. Removal.
- 34-A. Nationality of an officer or a member of the University.
- 34-B. Seniority—how determined.
- 34-C. The tenure of office—how long to continue :
35. Notice of annual meetings.
36. Notice of proposals or amendments.
37. Notice of Special General Meetings and business to be transacted.

Sections.

38. Procedure at meetings to be regulated by Rules to be made by the Court.
39. Contracts.
40. [Repealed].
41. List of donors.
42. Registered donors.
- 43-71. [Repealed].
72. Provision for maintenance of Central Hindu School.
- 73-80. [Repealed].
81. Properties belonging to the school to be properties of the University.
- 3-162. Statutes relating to Provident Fund made by the Court under Section 16-A of the Act.

ADAPTED AND MODIFIED BY THE GOVERNMENT OF INDIA (ADAPTATION OF INDIAN LAWS) ORDER, 1937.

ADAPTED AND MODIFIED BY THE ADAPTATION OF LAWS ORDER, 1950.

[Received the assent of the Governor-General on the 1st October, 1915]

An Act to establish and incorporate a teaching and residential Hindu University at Benares.

Whereas it is expedient to establish and incorporate a teaching and residential Hindu University at Banaras, and to dissolve the Hindu University Society, a Society registered under the Societies Registration Act, 1860, and to transfer to, and vest in, the said University all property and rights now vested in the said Society ;

It is hereby enacted as follows ;

Prefatory Note :—⁽¹⁾ For S. O. R. see Gaz. of I., 1915, Pt. V, p. 41, for R. S. Com., see Ibid 1915, Pt. V, p. 61; and for Proceedings in Council, see ibid 1915, Pt. VI pp. 291, 441 and 503.

The expressions "Banaras", "Executive Council", "Ordinances" and "Academic Council" were, unless otherwise expressly provided by this amending Act, subs. by S. 2 of the Benares Hindu University (Amendment) Act, 1951, (Act No. LV of 1951) for the expressions "Banaras", "(Council", "Regulations" and "Senate" respectively, whenever they occur in the Principal Act.

(3) For S. O. R. of Act LV of 1951 see Gaz. 1951, Pt. II, S. 2, pp. 315—323; for discussion, see Parliamentary Debates, d. April 26, 1951, in Vol. XI, p. 516, d. Aug. 25, 1951, in Vol. XIV, pp. 1287—1328, d. Sept 7, 1951, in Vol. XV, pp. 2201—2203, d. Sept. 26 and 27, 1951, in Vol. XVI, pp. 3346—3449 and 3462—3545 respectively.

Ss. 15 and 16 of this Act run as follows :—

15. The Central Government may, by notification in the Official Gazette, make such adaptations and modifications in the Statutes in force immediately before the commencement of this Act as in its opinion may be necessary or expedient to bring the provisions of the Statutes into accord with the provisions of the Principal Act as amended by this Act.

Provided that nothing in this section shall be deemed to empower the Central Government to make any adaptation or modification of any such Statutes after the expiration of three months from the commencement of this Act.

16. Any officer or authority of the University exercising any functions under the Principal Act, immediately before the commencement of this Act, shall continue to exercise such functions until the corresponding new office or authority is appointed, elected or constituted in accordance with the provisions of the Principal Act as amended by this Act or the Statutes as adapted or modified under this Act.

1. Short title and commencement.—(1) This Act may be called the Banaras Hindu University Act, 1915.

(2) It shall come into force on such date² as the [Central Government]³ may, by notification in the [Official Gazette]⁴ direct.

2. Definitions.—In this Act, unless there is anything repugnant in the subject or context,—

(a) “College” means any college or institution maintained or admitted to privileges by the University :

(b) [Executive Council]⁵ means the University [Executive Council]⁵;

(c) “Court” means the University Court ;

(d) “Faculty” means a Faculty of the University ;

(e) [Ordinances]⁶ means the [Ordinances]⁶ of the University for the time being in force ;

(f) [Academic Council]⁷ means the [Academic Council]⁷ of the University ;

(g) “Statutes” mean the Statutes of the University for the time being in force ; and

(h) “University” means the Banaras Hindu University.

3. Incorporation.—(1) The First Chancellor, Pro-Chancellor and Vice-Chancellor who shall be the persons specified in this behalf by a notification of the [Central Government]⁸ in the [Official Gazette]⁹, and the persons indicated in Schedule I as members of the Court and the [Academic Council], and all persons who may hereafter become, or be appointed as such officers or members, so long as they continue to hold such office or membership, shall be constituted a body corporate by the name of the Banaras Hindu University.

(2) The University shall have perpetual succession and a common Seal, and shall sue, and be sued, by the name first aforesaid.

(3) The University shall be deemed to have been incorporated for the purposes, among others, of making provision for imparting education, literary, artistic and scientific, as well as agricultural, technical, commercial and professional, of furthering the prosecution of original research, and of giving instructions in Hindu theology and religion, and of promoting the study of literature, art, philosophy, history, medicine and science, and of imparting physical and moral training.

[4. University open to all classes, castes and creeds.]—The University shall be open to persons of either sex and of whatever race, creed, caste or class, and it shall not be lawful for the University to adopt or impose on any person any test whatsoever of religious belief or profession in order to entitle him to be admitted therein, as a teacher or student, or to hold any office therein, or to graduate thereat, or to

2. The 1st April, 1916, see not. no. 255 d, March 23, 1916, in *Gaz. of I.*, 1916, Pt. I, p. 352.
3. Subs. for [G.-G.-in-C.] by the A. O. 1937.
4. Subs. for [*Gaz. of I.*] *ibid.*
5. The Expressions ‘Banaras’, ‘Executive Council’, ‘Ordinances’ ‘Academic Council’ were subs. for the words ‘Banaras’, ‘Council’,

- ‘Regulations’ and ‘Senate’ respectively by U. P. Act LV of 1951.
6. Subs. for [G.-G.-in-C] by the A. O. 1937.
7. Subs. for [*Gaz. of I.*] *ibid.*
8. Subs. for the word ‘Senate’ by U. P. No. LV of 1951.
9. Subs. by Section 3 of Act LV of 1951 for Sections 4, 5 and 6.

enjoy or exercise any privilege thereof, except in respect of any particular benefaction accepted by the University, where such test is made a condition thereof by any testamentary or other instrument creating such benefaction :

Provided that nothing in this section shall be deemed to prevent religious instruction being given in the manner prescribed by the Ordinances to those who have consented to receive it.

4-A. Powers of the University.—The University shall have the following powers, namely :

- (1) to provide for instruction in such branches of learning as the University may think fit, and to make provision for research and for the advancement and dissemination of knowledge ;
- (2) to promote Oriental studies, and in particular Vedic, Hindu, Buddhist and Jain studies, and to give instruction in Hindu religion and to impart moral and physical training ;
- (3) to hold examinations and to grant and confer degrees and other academic distinctions to and on persons who—
 - (a) shall have pursued a course of study in the University or in an institution maintained under sub-section (1) of Section 15 or admitted to the privileges of the University under sub-section (2) of that section ; or
 - (b) are teachers in educational institutions, under conditions laid down in the Statutes and the Ordinances, and shall have passed the examinations of the University under like conditions ; or
 - (c) being women, shall have pursued a course of private study and shall have passed the examinations of the University under conditions laid down in the Ordinances ;
- (4) to confer honorary degrees or other distinctions in the manner laid down in the Statutes ;
- (5) to grant such diplomas to, and to provide such lectures and instruction for, persons not being members of the University, as the University may determine ;
- (6) to co-operate with other Universities and authorities in such manner and for such purposes as the University may determine ;
- (7) to institute professorships, readerships, lecturerships and other teaching posts required by the University and to appoint persons to such professorships, readerships, lecturerships and other posts ;
- (8) to institute and award fellowships (including travelling fellowships), scholarships, studentships, exhibitions and prizes in accordance with the Statutes and the Ordinances ;
- (9) to institute and maintain Halls and hostels and to recognise places of residence for students of the University ;
- (10) to demand and receive such fees and other charges as may be prescribed by the Ordinances ;

- (11) to supervise and control the residence and to regulate the discipline of students of the University, and to make arrangements for promoting their health;
- (12) to make special arrangements in respect of the residence, discipline, and teaching of women students;
- (13) to create administrative, ministerial and other necessary posts and to make appointment thereto; and
- (14) to do all such other acts and things, whether incidental to the powers aforesaid or not, as may be requisite in order to further the objects of the University.

5. Visitor.—(1) The President of India shall be the Visitor of the University.

(2) The Visitor shall have the right to cause an inspection to be made by such person or persons as he may direct, of the University, its buildings, laboratories and equipment and of any institution maintained by the University, and also of the examinations, teaching and other work conducted or done by the University and to cause an inquiry to be made in like manner in respect of any matter connected with the University.

(3) The Visitor shall in every case give notice to the University of his intention to cause an inspection or inquiry to be made, and the University shall be entitled to appoint a representative who shall have the right to be present and be heard at such inspection or inquiry.

(4) The Visitor may address the Vice-Chancellor with reference to the result of such inspection and inquiry, and the Vice-Chancellor shall communicate to the Executive Council the views of the Visitor with such advice as the Visitor may offer upon the action to be taken thereon.

(5) The Executive Council shall communicate through the Vice-Chancellor to the Visitor such action, if any, as it is proposed to take or has been taken upon the result of such inspection or inquiry.

(6) Where the Executive Council does not, within a reasonable time, take action to the satisfaction of the Visitor, the Visitor may, after considering any explanation furnished or representation made by the Executive Council, issue such directions as he may think fit and the Executive Council shall be bound to comply with such directions.

(7) Without prejudice to the foregoing provisions of this section the Visitor may, by order in writing, annul any proceeding of the University which is not in conformity with this Act, the Statutes or the Ordinances:

Provided that before making any such order, he shall call upon the University to show cause why such an order should not be made and if any cause is shown within a reasonable time, shall consider the same.

6. Chief Rector and Rectors.—(1) The Governor of the State of Uttar Pradesh shall be the Chief Rector of the University.

(2) Such persons, as may be appointed in this behalf in accordance with the Statutes, shall be the Rectors of the University.]

7. Officers and authorities of the University.—[The following shall be the officers and authorities of the University:—

Officers of the University

- (i) the Chancellor,
- (ii) the Pro-Chancellor,
Provided that until one of the two Pro-Chancellors holding office at the commencement of the Banaras Hindu University (Amendment) Act, 1951, ceases to hold office, there shall be two Pro-Chancellors,
- (iii) the Vice-Chancellor,
- (iv) the Pro-Vice-Chancellor,
- (v) the Treasurer,
- (vi) the Registrar,
- (vii) the Deans of the Faculties, and
- (viii) such other persons in the service of the University as may be declared by the Statutes to be the Officers of the University.

Authorities of the University

- (i) the Court,
- (ii) the Executive Council,
- (iii) the Academic Council,
- (iv) the Standing Committee of the Academic Council,
- (v) the Finance Committee.
- (vi) the Faculties, and
- (vii) such other authorities as may be declared by the Statutes to be authorities of the University.]

8. Powers and duties of officers, term of office and filling of casual vacancies.—Subject to the provisions of this Act, the powers and duties of the officers of the University, the term for which they shall hold office, and the filling up of causal vacancies in such offices, shall be provided for by the Statutes.

9. The Court.—(1) The Court shall be the supreme governing body of the University * * *¹ and shall have power to review the acts of [the Executive Council, the Academic Council and the Standing Committee of the Academic Council (save when these authorities have acted in accordance with powers conferred upon them under this Act, the Statutes or the Ordinances)], and shall exercise all the powers of the University not otherwise provided for by this Act or the Statutes.

(2) * * *².

10. The Executive Council.—⁴[(1) The Executive Council shall be the executive body of the University.]

(2) The [Executive Council]⁵ shall exercise such powers and perform such duties as may be vested in it by the Statutes.

11. The Academic Council.—(1) The [Academic Council]⁶ shall

- 1. The words [in administrative matters] omit, by S. 5. (a) (i) of Act LV of 1951.
- 2. Subs. by S. 5 (a) (ii) *ibid* for [the Senate (save when the Senate has acted in accordance with powers

conferred on it under this Act, the Statutes or the Regulations).]

3. Omit, by S. 5 (b) *ibid*.

4. Subs. by S. 6. *ibid*.

5. See entry under footnote No. 5 on page 337.

be the academic body of the University and, subject to the Act, the Statutes and [Ordinances]¹ shall have * * *² charge of the organization of instruction in the University and the Colleges, the courses of study and the examination and discipline of students and the conferment of ordinary and honorary degrees.

2) * * *³.

12. The Standing Committee of the Academic Council.—[There shall be a Standing Committee of the Academic Council which shall exercise such powers and perform such duties as may be vested in it by the Statutes.]⁴

13. Audit of accounts. [(1) The accounts of the University shall, once at least in every year and at intervals of not more than fifteen months, be audited by the Comptroller and Auditor-General of India]⁵.

(2) The accounts, when audited, shall be published in the [Official Gazette]⁶, and a copy of the accounts, together with the auditor's report, shall be submitted to the Visitor.

14. Permanent reserve to cover recurring charges.—The University shall invest, and keep invested, in securities in which trust funds may be invested, in accordance with the provisions of the law relating to trusts in [India]⁷ and a sum of fifty lakhs of rupees as a permanent endowment to meet the recurring charges of the University other than charges in respect of scholarships, prizes and rewards :

Provided that—

- (1) any Government securities, as defined by the ⁸Indian Securities Act, 1816, which may be held by the University shall, for the purpose of this section, be reckoned at their face-value ; and
- (2) the aforesaid sum of fifty lakhs shall be reduced by such sum as, at the commencement of this Act, the [Central Government]⁹ shall, by order in writing, declare to be the total capitalised value, for the purposes of this section,—
 - (a) of all permanent recurring grants of money which have been made to the University by any Indian Prince or Chief; and
 - (b) of the total income accruing from immovable property which has been transferred to the University.

15. Maintenance and admission to privileges of colleges.—(1) The Central Hindu College, Banaras shall, from such date¹⁰ as the [Central Government]¹¹ may, by notification in the [Official Gazette]¹², appoint in this behalf, be deemed to be a College maintained by the

1. See entry under footnote No. 5 on page 337.
2. The word [entire] omit. by S. 7 (a) of Act LV of 1951.
3. Sub-s. (2) omit. by S. 7 (b) *ibid.*
4. Subs. by S. 8 *ibid.*
5. Subs. by S. 9 *ibid.*
6. Subs. for [Gaz. of I.] by the A. O. 1937.
7. Subs. for [the States] by S. 10 of Act LV of 1951, which had been

- subs. by the A. O. 1950 for [the Provinces] which had been subs. by the A. O. 1948 for [British India].
8. See now the Indian Securities Act, 1920 (Act X of 1920).
9. Subs. for [G.-G.-in-C.] by the A. O. 1937.
10. The 1st October, 1917, see not. no. 838. d. October 1, 1917, in *Gaz.*, 1917, Pt. I, p. 1686.

University, and the University may found and maintain other Colleges and [institutions including High Schools, within a radius of fifteen miles from the main temple of the University]¹ for the purposes of carrying out instruction and research.

(2) With the approval of the [Academic Council]² and the sanction of the Visitor, and subject to the Statutes and [Ordinances]³, the University may admit Colleges and [institutions including High Schools, within the afore-mentioned limits]⁴ to such privileges of the University, subject to such conditions, as it thinks fit.

16. Recognition of degrees.—The degrees, diplomas, certificates and other academic distinctions granted by the University, shall be recognized by [the Central and State Governments] to the same extent and in the same manner as the corresponding degrees, diplomas, certificates and other academic distinctions granted by any other University incorporated by [a Central Act]⁵.

[16-A. Pension or Provident Fund.]—The University shall constitute for the benefit of its officers, teachers and other servants such pension or provident fund [or provide such insurance scheme]⁶ as it may deem fit in such manner and subject to such conditions as may be prescribed by the Statutes.]

17. Statutes.—[(1) Subject to the provisions of the Act, the Statutes may provide for all or any of the following matters, namely :—

- (a) the constitution, powers and duties of the Court, the Executive Council, the Academic Council, the Standing Committee of the Academic Council, the Finance Committee and such other bodies, as may be deemed necessary to constitute from time to time ;
- (b) the election and continuance in office of the members of the said bodies, including the continuance in office of the first members, and the filling of vacancies of members, and all other matters relative to those bodies for which it may be necessary or desirable to provide ;
- (c) the appointment, powers and duties of the officers of the University ;
- (d) the constitution of a pension or provident fund and the establishment of an insurance scheme for the benefit of the officers, teachers and other employees of the University ;
- (e) the conferment of honorary degrees ;
- (f) the withdrawal of degrees, diplomas, certificates and other academic distinctions ;

1. Subs. for [institutions in Banaras] by S. 11 (a) of Act LV of 1951.

2. See entry under footnote No. 5 on p. 337.

3. Subs. for [institutions in Banaras] by Section 11 (b) of Act LV of 1951.

4. Subs. by the A. O. 1948 for [any Govt. in British India] which had been subs. by the A. O. 1937 for [the Govt.]. The word [State]

was subs. for [Prov.] by the A. O. 1950.

5. Subs. by the A. O. 1950 for [an Act of Central Legislature] which had been subs. by the A. O. 1937 for [G.-G.-in-C.]

6. Ins. by Section 4 of Act XXXIX of 1930.

7. Ins. by Section 12 of Act LV of 1951.

- (g) the establishment and abolition of Faculties, Departments, Halls, Colleges and institutions ;
- (h) the conditions under which colleges and other institutions may be admitted to the privileges of the University and the withdrawal of such privileges ;
- (i) the institution of fellowships, scholarships, studentships, exhibitions, medals and prizes ; and
- (j) all other matters which by this Act are to be or may be provided by the Statutes.]¹

(2) The first Statutes shall be those set out in Schedule I.

[(3) The Court may, from time to time, make new or additional Statutes or may amend or repeal the Statutes in the manner hereinafter in this section provided.

(4) The Executive Council may propose to the Court the draft of any Statute to be passed by the Court, and such draft shall be considered by the Court at its next meeting.

(5) The Court may approve any such draft as is referred to in subsection (4) and pass the Statute or reject it or return it to the Executive Council for reconsideration, either in whole or in part, together with any amendments which the Court may suggest :

Provided that the Executive Council shall not propose the draft of any Statute or of any amendment of a Statute affecting the status, powers or constitution of any existing authority of the University until such authority has been given an opportunity of expressing an opinion upon the proposal, and any opinion so expressed shall be in writing and shall be considered by the Court.

(6) Any member of the Court may propose to the Court the draft of any Statute and the Court may either reject the proposal or refer such draft for consideration to the Executive Council, which may either reject the proposal or submit the draft to the Court in such form as the Executive Council may approve, and the provisions of this section shall apply in the case of any draft so submitted as they apply in the case of a draft proposed to the Court by the Executive Council.

(7) Every new Statute or addition to the Statutes or any amendment or repeal of a Statute shall require the previous approval of the Visitor who may sanction, disallow or remit it for further consideration]²

³[18. Ordinances. - (1) Subject to the provisions of this Act and the Statutes, the Ordinances may provide for all or any of the following matters, namely :—

- (a) the admission of students to the University and their enrolment as such ;
- (b) the courses of study to be laid down for all degrees, diplomas and certificates of the University ;
- (c) the degrees, diplomas, certificates and other academic distinctions to be awarded by the University, the qualifications for the same, and the means to be taken relating to the granting and obtaining the same ;

1. Subs. by Section 13 (i) of Act LV of 1951.
2. Subs. by Section 13 (ii) ibid for

sub-ss. (3), (4) and (5).
3. Subs. by Section 14 of Act LV of 1951.

- (d) the fees to be charged for courses of study in the University and for admission to the examinations, degrees and diplomas of the University ;
- (e) the conditions of the award of fellowships, scholarships, studentships, exhibitions, medals and prizes ;
- (f) the conduct of examinations, including the terms of office and manner of appointment and the duties of examining bodies, examiners and moderators ;
- (g) the maintenance of discipline among the students of the University ;
- (h) the conditions of residence of students at the University ;
- (i) the special arrangements, if any, which may be made for the residence, discipline and teaching of women students, and the prescribing for them of special courses of study ;
- (j) the giving of religious instruction ;
- (k) the emoluments and the terms and conditions of service of teachers of the University ;
- (l) the management of Colleges and other institutions founded or maintained under sub-section (1) of Section 15 ;
- (m) the supervision and inspection of Colleges and other institutions admitted to privileges of the University under sub-section (2) of Section 15 ; and
- (n) all other matters which by this Act or the Statutes are to be or may be provided for by the Ordinances.

(2) The Regulations of the University as in force immediately before the commencement of the Banaras Hindu University (Amendment) Act, 1951, shall be deemed to be the first Ordinances made under this section.

(3) The said Ordinances may be amended, repealed or added to at any time by the Executive Council :

Provided that—

- (i) no Ordinance shall be made affecting the conditions of residence or discipline of students, except after consultation with the Academic Council ;
- (ii) no Ordinance shall be made—
 - (a) affecting the admission or enrolment of students or, prescribing examinations to be recognised as equivalent to the University examinations, or
 - (b) affecting the conditions, mode of appointment or duties of examiners or the conduct or standard of examinations or any course of study,

unless a draft of such Ordinance has been proposed by the Academic Council.

(4) The Executive Council shall not have power to amend any draft proposed by the Academic Council under the provisions of sub-section (3) but may reject the proposal or return the draft to the Academic Council for reconsideration, either in whole or in part, together with any amendments which the Executive Council may suggest.

- (d) the fees to be charged for courses of study in the University and for admission to the examinations, degrees and diplomas of the University ;
- (e) the conditions of the award of fellowships, scholarships, studentships, exhibitions, medals and prizes ;
- (f) the conduct of examinations, including the terms of office and manner of appointment and the duties of examining bodies, examiners and moderators ;
- (g) the maintenance of discipline among the students of the University ;
- (h) the conditions of residence of students at the University ;
- (i) the special arrangements, if any, which may be made for the residence, discipline and teaching of women students, and the prescribing for them of special courses of study ;
- (j) the giving of religious instruction ;
- (k) the emoluments and the terms and conditions of service of teachers of the University ;
- (l) the management of Colleges and other institutions founded or maintained under sub-section (1) of Section 15 ;
- (m) the supervision and inspection of Colleges and other institutions admitted to privileges of the University under sub-section (2) of Section 15 ; and
- (n) all other matters which by this Act or the Statutes are to be or may be provided for by the Ordinances.

(2) The Regulations of the University as in force immediately before the commencement of the Banaras Hindu University (Amendment) Act, 1951, shall be deemed to be the first Ordinances made under this section.

(3) The said Ordinances may be amended, repealed or added to at any time by the Executive Council :

Provided that—

- (i) no Ordinance shall be made affecting the conditions of residence or discipline of students, except after consultation with the Academic Council ;
- (ii) no Ordinance shall be made—
 - (a) affecting the admission or enrolment of students or, prescribing examinations to be recognised as equivalent to the University examinations, or
 - (b) affecting the conditions, mode of appointment or duties of examiners or the conduct or standard of examinations or any course of study,

unless a draft of such Ordinance has been proposed by the Academic Council.

(4) The Executive Council shall not have power to amend any draft proposed by the Academic Council under the provisions of sub-section (3) but may reject the proposal or return the draft to the Academic Council for reconsideration, either in whole or in part, together with any amendments which the Executive Council may suggest.

(5) Where the Executive Council has rejected the draft of an Ordinance proposed by the Academic Council, the Academic Council may appeal to the Central Government and the Central Government may, by order, direct that the proposed Ordinance shall be laid before the next meeting of the Court for its approval and that pending such approval it shall have effect from such date as may be specified in the order:

Provided that if the Ordinance is not approved by the Court at such meeting, it shall cease to have effect.

(6) All Ordinances made by the Executive Council shall be submitted, as soon as may be, to the Visitor and the Court, and shall be considered by the Court at its next meeting and the Court shall have power, by a resolution passed by a majority of not less than two-thirds of the members voting to cancel any Ordinance made by the Executive Council, and such Ordinance shall, from the date of such resolution, cease to have effect.

(7) The Visitor may, by order, direct that the operation of any Ordinance shall be suspended until he has had an opportunity of exercising his power of disallowance, and any order of suspension under this sub-section shall cease to have effect on the expiration of one month from the date of such order or on the expiration of fifteen days from the date of consideration of the Ordinance by the Court, whichever period expires later.

(8) The Visitor may, at any time after an Ordinance has been considered by the Court, signify to the Executive Council his disallowance of such Ordinance, and from the date of receipt by the Executive Council of intimation of such disallowance, such Ordinance shall cease to have effect.]

¹[19. Power to make Regulations. (1) The authorities of the University may make Regulations consistent with this Act, the Statutes and the Ordinances -

- (a) laying down the procedure to be observed at their meetings and the number of members required to form a quorum ;
- (b) providing for all matters which by this Act, the Statutes or the Ordinances are to be prescribed by Regulations ; and
- (c) providing for all matters solely concerning such authorities or committees appointed by them and not provided for by this Act, the Statutes or the Ordinances.

(2) Every authority of the University shall make Regulations providing for the giving of notice to the members of such authority of the dates of meetings and of the business to be considered at meetings and for the keeping of a record of the proceedings of meetings.

(3) The Executive Council may direct the amendment, in such manner as it may specify, of any Regulation made under this section or the annulment of any such Regulation :

Provided that any authority of the University which is dissatisfied with any such direction may appeal to the Court, whose decision in the matter shall be final.

19-A. Conditions of service of officers and teachers.—(1) Every salaried officer and teacher of the University shall be appointed under a written contract, which shall be lodged with the University and a copy of which shall be furnished to the officer or teacher concerned.

(2) Any dispute arising out of a contract between the University and any of its officers or teachers shall, at the request of the officer or teacher concerned or at the instance of the University, be referred to a Tribunal of Arbitration consisting of one member appointed by the Executive Council, one member nominated by the officer or teacher concerned and an umpire appointed by the Visitor, and the decision of the Tribunal shall be final.]

20. Dissolution and transfer of property of the Hindu University Society.—(1) From the commencement of this Act, the Hindu University Society shall be dissolved, and all property, movable and immovable, and all rights, powers and privileges of the Hindu University Society which, immediately before the commencement of this Act, belonged to, or were vested in the said Society, shall vest in the University, and shall be applied to the objects and purposes for which the University is incorporated.

(2) From the commencement of this Act, all debts and liabilities of the said Society shall be transferred and attached to the University, and shall thereafter be discharged and satisfied by the University.

(3) Any will, deed or other document, whether made or executed before or after the commencement of this Act, which contains any bequest, gift or trust in favour of the Central Hindu College or the said Society shall, on the commencement of this Act, be construed as if the University were therein named, instead of the said College or Society.

SCHEDULE I

FIRST STATUTES OF THE UNIVERSITY¹

[See Sections 3 and 17 (2)]

1. Definitions—(1) In these Statutes—

“The Act” means the Banaras Hindu University Act, 1915.

(2) All words and expressions used herein and defined in the Act shall be deemed to have the meanings respectively attributed to them by the Act.

2. [Omitted].

As adapted and modified by the Central Government in exercise of the powers conferred by Section 15 of the Banaras Hindu University (Amendment) Act, 1951 (L.V of 1951). (*Vide* page 434 of the *Gazette of India*, November 3, 1951, Part I—Section 1, notified by the Ministry of Education, New Delhi, No. F. 27-15/51-G. 3, dated the 3rd November, 1951).

And further amended by Notification No. F. 27-15/51-G. 3, dated the 15th November, 1951,

or the Ministry of Education, Government of India, New Delhi.

And still further amended by Notification No. F. 27-15/51-G. 3, dated the 28th January, 1952 of the Ministry of Education, Government of India, New Delhi (*Vide* pages 131 to 136 of *Gazette of India—Extraordinary*, Part I, Section 1).

NOTE:—The adaptations and modifications and amendments are within square brackets.

[**3. Rectors.**—The Visitor may, on his own motion, or on the recommendation of the Court, appoint such persons, as he may think fit, to be the Rectors of the University.]

[**3-A. Officers of the University.**—The following persons in the service of the University are hereby declared to be officers of the University, namely :—

- (1) Librarian,
- (2) Provost,
- (3) Chief Proctor.]

[**3-B. Appointment of Librarian, Provost and Chief Proctor.**—

(1) The Librarian shall be appointed by the Executive Council and shall be a wholetime officer of the University.

(2) The Provost shall be appointed by the Executive Council on the recommendation of the Vice-Chancellor and shall exercise such powers and perform such duties as may be assigned to him by the Vice-Chancellor. The Provost shall hold office for a term of two years.

(3) The Chief Proctor shall be appointed by the Executive Council on the recommendation of the Vice-Chancellor and shall exercise such powers and perform such duties as may be assigned to him by the Vice-Chancellor. The Chief Proctor shall hold office for a term of two years.]

4. The Chancellor.—[(1) The Chancellor shall be elected by the Court.]

(2) The Chancellor shall hold office for a period of three years :

[Provided that, notwithstanding the expiry of the said period of three years, he shall continue to hold office until the election of his successor at the next annual meeting of the Court.]

(3) In the case of a casual vacancy in the office of the Chancellor, the Pro-Chancellor shall exercise the functions of the Chancellor until a new Chancellor is elected.

5. Powers of Chancellor. (1) The Chancellor shall, by virtue of his office, be the head of the University.

(2) The Chancellor shall, if present, preside at the convocation of the University for conferring degrees, and at all [*] meetings of the Court.

(3) [Omitted].

6. The Pro-Chancellor. (1) [The Pro-Chancellor shall be elected by the Court.]

(2) [The Pro-Chancellor shall hold office for a period of three years :

Provided that, notwithstanding the expiry of the said period of three years, he shall continue to hold office until the election of his successor at the next annual meeting of the Court.]

(3) [A casual vacancy in the office of the Pro-Chancellor shall be filled by the Chancellor on the recommendation of the Executive Council. The person so appointed shall hold office until the election of his successor at the next annual meeting of the Court.]

7. Powers of the Pro-Chancellor.—[In the absence of the Chancellor, the Pro-Chancellor, if present, shall preside at a meeting of the Court.]

8. The Vice-Chancellor.—(1) [The Vice-Chancellor shall be appointed by the Visitor from among persons recommended by the Executive Council :

Provided that if the Visitor does not approve of any of the persons so recommended he may call for fresh recommendations from the Executive Council.]

(2) [The Vice-Chancellor shall be a whole-time officer of the University.]

(3) [The Vice-Chancellor shall hold office for a term of six years and shall not be eligible for re-appointment :

Provided that, notwithstanding the expiry of the said period of six years, he shall continue in office until his successor is appointed and enters upon his office :

Provided further that the Visitor may direct that a Vice-Chancellor, whose term of office has expired, shall continue in office for such period not exceeding one year, as may be specified in the direction.]

(4) [The emoluments and other terms and conditions of service of the Vice-Chancellor shall be prescribed by the Ordinances.]

(5) [In the case of a casual vacancy in the office of the Vice-Chancellor, the Pro-Vice-Chancellor shall, until the appointment of a new Vice-Chancellor, perform the functions of the Vice-Chancellor :

Provided that if the Pro-Vice-Chancellor is not able to act, the Registrar shall carry on the current duties of the Vice-Chancellor and take action under item (g) of clause (3) of Statute 13.]

9. Powers of the Vice-Chancellor.—(1) [The Vice-Chancellor shall be the principal executive and academic officer of the University] and shall take rank in the University next to the Pro-Chancellor. He shall be the *ex-officio* Chairman of the [Executive Council the Academic Council, the Standing Committee of the Academic Council and the Finance Committee,] and shall, in the absence of the Chancellor and the Pro-Chancellor preside at the Convocation to confer degrees. In the absence of the Chancellor and the Pro-Chancellor, he shall also preside at the meetings of the Court. [He shall be entitled to be present at and to address any meeting of any authority or other body of the University but shall not be entitled to vote thereat unless he is a member of such authority or body.]

(2) [It shall be the duty of the Vice-Chancellor to see that the Act, the Statutes, the Ordinances and the Regulations are faithfully observed. He shall have all powers necessary for the purpose].

(3) [The Vice-Chancellor shall have power to convene meetings of the Court, the Executive Council, the Academic Council, and the Standing Committee of the Academic Council, and may do all such acts as may be necessary to carry out or further the provisions of the Act, the Statutes and the Ordinances.]

(4) [If, in the opinion of the Vice-Chancellor, any emergency has arisen which requires that immediate action should be taken, the

Vice-Chancellor shall take such action as he deems necessary, and shall report the same for confirmation at the next meeting to the authority which, in the ordinary course, would have dealt with the matter :

Provided that if the action taken by the Vice-Chancellor is not approved by the authority concerned, he may refer the matter to the Visitor whose decision shall be final :

Provided further that, where any such action taken by the Vice-Chancellor affects any person in the service of the University, such person shall be entitled to prefer within thirty days from the date on which he receives notice of such action, an appeal to the Executive Council.]

(5) [The Vice-Chancellor shall exercise general control over the affairs of the University and shall give effect to the decisions of the authorities of the University.]

10. Pro-Vice-Chancellor.—(1) [The Pro-Vice-Chancellor shall be appointed by the Executive Council on the recommendation of the Vice-Chancellor and on such terms as may be laid down in the Ordinances :

Provided that where the recommendation of the Vice-Chancellor is not accepted by the Executive Council, the matter shall be referred to the Visitor who may either appoint the person recommended by the Vice-Chancellor or ask the Vice-Chancellor to recommend another name to the Executive Council.]

(2) [The term of office of the Pro-Vice-Chancellor shall ordinarily be co-terminous with the term of office of the Vice-Chancellor :

Provided that, notwithstanding the expiry of the term of his office, the Pro-Vice-Chancellor shall continue in office until his successor is appointed and enters upon his office.]

(3) [On the expiry of the term of his office, the Pro-Vice-Chancellor shall be eligible for re-appointment.]

11. Powers of the Pro-Vice-Chancellor.—(1) [The Pro-Vice-Chancellor shall assist Vice-Chancellor in all matters, administrative and academic, and in the absence of the Vice-Chancellor, shall have and exercise all the functions and powers of the Vice-Chancellor.]

(2) [The Pro-Vice-Chancellor shall be entitled to be present at and to address any meeting of any authority or other body of the University but shall not be entitled to vote thereat unless he is a member of such authority or body.]

[12. The Treasurer.]—(1) The Treasurer shall be elected by the Court from among a panel of three persons nominated by the Executive Council, and the election shall be subject to the approval of the Visitor. He shall hold office for a term of five years.]

(2) [He shall be an *ex-officio* member of the Court and the Executive Council.]

(3) [A casual vacancy in the office of the Treasurer shall be filled by the Executive Council. The person appointed to fill such vacancy shall hold office until the election of his successor at the next annual meeting of the Court.]

(4) The Treasurer shall exercise general supervision over the funds of the University and shall advise it as regards its financial policy.

(5) [The Treasurer shall --

- (a) subject to the control of the Executive Council, manage the property and investments of the University, and be responsible for the preparation of the annual estimates and statements of accounts and for their presentation to the Executive Council and the Court ;
- (b) subject to the powers of the Executive Council, be responsible for seeing that all monies are expended on the purpose for which they are granted or allotted ;
- (c) sign all contracts made on behalf of the University ;
- (d) convene meetings of the Finance Committee ; and
- (e) exercise such other powers as may be prescribed by the Statutes and the Ordinances.]

(6) [The receipt of the Treasurer or of the person or persons duly authorised in this behalf by the Executive Council for any money payable to the University shall be sufficient discharge for the same.]

13. The Registrar. (1) The Registrar shall be appointed by the Executive Council and shall be a whole-time officer of the University. The terms and conditions of service of the Registrar shall be such as may be prescribed by the Ordinances.

[(2) The Registrar shall be *ex-officio* Secretary of the Court, the Executive Council, the Academic Council, the Standing Committee of the Academic Council, the Finance Committee and the Faculties, but shall not be deemed to be a member of any of these authorities.]

(3) It shall be the duty of the Registrar--

- (a) to be the custodian of the records, Common Seal and such other property of the University as the [Executive Council] shall commit to his charge ;
- (b) [to issue all notices convening meetings of the Court, the Executive Council, the Academic Council, the Standing Committee of the Academic Council, the Finance Committee, the Faculties, the Boards of Studies, the Boards of Examiners, and of any Committees appointed by the authorities of the University ;]
- (c) [to keep the minutes of all meetings of the Court, the Executive Council, the Academic Council, the Standing Committee of the Academic Council, the Finance Committee, the Faculties, and any Committees appointed by the authorities of the University ;]
- (d) to conduct the official correspondence of the [Court, the Executive Council, the Academic Council and the Standing Committee of the Academic Council] ;
- (e) to arrange for, and superintend the examinations of the University ;
- (f) [to supply to the Visitor copies of the agendas of the meetings of the authorities of the University as soon as they are issued and the minutes of the meetings of the authorities ordinarily within a month of the holding of the meetings ;]

- (g) [in an emergency, when neither the Vice-Chancellor nor the Pro-Vice-Chancellor is able to act, to call a meeting of the Executive Council forthwith and to take its directions for the carrying on of the work of the University ;] and
- (h) to perform such other [duties] as may, from time to time, be [assigned to him by the Executive Council].

14. The Court.—1) [The Court shall consist of the following members, namely

Ex-officio Members

- (i) Chancellor ;
- (ii) Pro-Chancellor or Pro-Chancellors (so long as there are more than one Pro-Chancellor) ;
- (iii) Vice-Chancellor ;
- (iv) Pro-Vice-Chancellor ;
- (v) Treasurer ;
- (vi) all ex-Vice-Chancellors ;
- (vi-A) Librarian ;
- (vii) Provost ; and
- (viii) Chief Proctor.

Representatives of Departments and Colleges

- (ix) Heads of Teaching Department ;
- (x) Principals of Colleges ; and
- (xi) Professors who are not Heads of Teaching Departments.

Representatives of University Teachers other than Professors

- (xii) (a) Two Readers, by rotation according to seniority, who shall be members for a term of three years.
- (b) Three Lecturers, by rotation according to seniority, who shall be members for a term of three years.

Representatives of ex-Students

- (xiii) Fifteen representatives to be elected by the Alumni (Old Students) Association, established in accordance with Statute 29-A.

Donors

- (xiv) (a) Every person making to the University a donation of one lakh of rupees or upwards, or transferring property of the like value ;
- (b) Representatives of persons making to the University a donation of Rs. 25,000 or upwards excluding persons who have donated Rs. 1 lakh or more) elected from among themselves. There shall be one representative for every ten such persons, subject to a maximum of two representatives :

Provided that donors of Rs. 25,000 or upwards who are registered as such on the date of the commencement of the Benares Hindu University (Amendment) Act, 1951, shall continue to be members of the Court for the unexpired portion of their present term ;

- (c) representatives of persons making to the University a donation of Rs. 10,000 or upwards excluding those who have donated Rs. 25,000 or more) elected from among themselves. There shall be one representative for every twenty such persons, subject to a maximum of three representatives :

Provided that donors of Rs. 10,000 or upwards who are registered as such on the date of the commencement of the Benares Hindu University (Amendment) Act, 1951, shall continue to be members of the Court for the unexpired portion of their present term ; and

- (d) representatives of persons making to the University a donation of Rs. 1,000 or upwards (excluding persons who have donated Rs. 10,000 or more) elected from among themselves. There shall be one representative for every fifty such donors subject to a maximum of ten representatives :

Provided that all persons who before the date of the commencement of the Benares Hindu University (Amendment) Act, 1951, have made a donation of Rs. 500 or upwards (excluding persons who have donated Rs. 10,000 or more) shall also be entitled to participate in the election of the representatives under this sub-item.

*Explanation 1 :—*Every donor who makes to the University an annual grant of money, the payment of which is secured by mortgage of immovable property or in such other manner as the Executive Council may approve shall, subject to the provisions of Explanation 3, have the same rights as to membership of and representation on the Court as if he had been a donor of such sum as represents the capital value of such annual grant ascertained at the rate of interest of $3\frac{1}{2}$ per cent.

Provided that, in the case of a body corporate, the Executive Council may dispense with any such security.

*Explanation 2 :—*The amounts of donations specified in sub-items (a), (b), (c) and (d) may, for the purpose of qualifying the donors within these provisions, be made up partly of money or of capitalised grants as provided in Explanation 1, or of property, or partly of any two or more of these.

*Explanation 3 :—*When an annual grant is not fully paid up or falls in arrears the donor shall not be entitled to exercise any of the privileges conferred on him by any of the foregoing provisions of this Statute, unless and until the said arrears are paid up.

*Explanation 4 :—*Where the donors of a sum are more persons than one, who constitute a joint Hindu family or a partnership firm, or a company or corporation, the Registrar shall call upon such donors to elect, within a time to be fixed by him, one of their members to represent and act for them in voting at the election. If such donors fail to elect and notify the name and address of the person so elected by them within the time specified in the notice, or within such further period of time as may be allowed by the Registrar, or are unable to agree as to the person who should represent them for the purpose of voting at the election, the Registrar shall lay the matter for orders before the Vice-Chancellor, who may nominate any one of their number to represent

them at the election for the purpose of voting. The orders of the Vice-Chancellor in this regard shall be final. The name of the person so elected or nominated to represent such donors shall be entered in the column of remarks against the names of such donors, and for the purposes of serving all notices of elections, of making nominations of persons to be elected and for voting at the election, the person so noted as the representative of such donors, shall be deemed to be the person entitled to act as one of the electors.

Explanation 5: - Where the donor is a minor, or a person suffering from a disability, or a ward of the Court, the legal guardian of such person shall be entitled to act for him at the election as a voter, so long as the minority or disability continues or so long as he is a ward of a Court. Where the same person is not the legal guardian of the person and property of a minor, the legal guardian of the property shall be deemed to be the legal guardian.

Persons representing Learned Professions, Industry and Commerce

- (xv) Ten persons representing the learned professions to be elected by the Court, of whom at least five shall be persons residing outside the State or Uttar Pradesh; and
- (xvi) five persons representing industry and commerce to be elected by the Court.

Representatives of Parliament

- (xvii) Three representatives of Parliament, two to be elected by the House of the People in such manner as the Hon'ble the Speaker may direct and one to be elected by the Council of States, in such manner as the Chairman of the Council may direct :

Provided that until both Houses of Parliament are constituted, the three members may be elected by the Provisional Parliament.

Representatives of Hindu, Buddhist, Sikh and Jain Culture and Learning

- (xviii) (a) Five persons representing Hindu culture and learning to be elected by the Court;
- (b) three persons, one each to represent the Buddhist, Sikh and Jain culture and learning respectively, to be elected by the Court.

Nominated Members

- (xix) (a) Not more than five persons to be nominated by the Visitor;
- (b) not more than two persons to be nominated by the Chief Rector; and
- (c) not more than three persons to be nominated by the Chancellor:

Provided that in making nominations under sub-items (a) and (c) due regard shall be had to the representation of the different areas of the country, in view of the all-India character of the University :

Provided further that no employee of the University shall be eligible to be a member under any of the items (xiii), (xiv), (xv), (xvi), (xvii), (xviii) or (xix).]

[(2) If any body of the persons entitled to elect a member fails to do so within the time prescribed by the Court, the Court may appoint as member any person whom that body of persons could have elected as a member :]

Provided that, in the case of the first elections to the Court, the powers conferred upon the Court by this clause shall be exercisable by the Executive Council.]

[(3) Save as otherwise expressly provided, a member of the Court shall hold office for a period of five years.]

[(4) The method of election of members shall be as laid down in the Ordinances.]

[(5) The proceedings of the first meeting of the Court, including any adjourned meeting thereof, after the commencement of the Banaras Hindu University (Amendment) Act, 1951, shall be valid, notwithstanding the existence of vacancies under items (xiii) to (xix), inclusive, of clause (1) of this Statute.]

15. [Omitted].

16. (1) [Omitted].

(2) An annual meeting of the Court shall be held [on a date to be fixed by the Executive Council unless some other date has been fixed by the Court in respect of any year]. At such [annual] meeting, a report of the proceedings of the [Executive] Council and [a report of working] of the University [during the previous year] together with a statement of the receipts and expenditure and the balance-sheet as audited, [and the financial estimates] shall be presented by the [Executive] Council to such meeting, and any vacancies among the officers of the University or among the members of the Court or [Executive] Council which ought to be filled up by the Court shall be [so] filled up.

(3) A copy of the statement of receipts and expenditure and of the balance-sheet [and the financial estimates] referred to in clause (2) shall be sent to every member of the Court at least seven days before the date of the annual meeting, and shall be open to the inspection of all members of the Court and Academic Council at the office of the University during the year following such annual meeting, at such reasonable hours and under such conditions as the Executive Council may determine.

(4) [Twenty-five] members of the Court shall form a quorum.

(5) [Special meetings of the Court may be convened by the Executive Council or the Vice-Chancellor or, if there is no Vice-Chancellor, by the Pro-Vice-Chancellor, or, if there is no Pro-Vice-Chancellor, by the Registrar :

Provided that a special meeting of the Court shall also be called if one-third of the members of the Court or fifty members, whichever number is less, make a requisition in writing in this behalf.]

17. The Executive Council.—[(1) The Executive Council shall consist of the following members, namely—

(i) Vice-Chancellor ;

(ii) Pro-Vice-Chancellor ;

(iii) Treasurer ;

- (iv) two Deans, by rotation according to seniority;
 - (v) Principals of four Colleges, other than the Principals of Women's Colleges, to be members in rotation for a term of three years;
 - (vi) Principal of the Women's College, but if there are more than one such College the Principal of one such College in rotation according to seniority;
 - (vii) Provost;
 - (viii) Chief Proctor;
 - (ix) five persons, none of whom shall be an employee of the University, elected by the Court from among its members, of whom at least three shall be persons residing outside the State of Uttar Pradesh:
- Provided that until such persons are elected by the Court their places shall be filled by persons nominated by the Visitor.
- (x) Two persons nominated by the Visitor;
 - (xi) one person nominated by the Chief Rector; and
 - (xii) one person nominated by the Chancellor.
- (2) Members of the Executive Council referred to in items (v), (vi) and (ix) to (xii) shall hold office for a term of three years.
- (3) [Seven members of the Executive Council shall form a quorum.]

18. Powers of the Executive Council.—(1) The [Executive] Council shall, subject to the control of the Court, have the management and administration of the whole revenue and property of the University and the conduct of all administrative affairs of the University not otherwise provided for.

(2) Subject to the provisions of the Act, the Statutes and [the Ordinances], the [Executive] Council shall, in addition to all other powers vested in it, have the following powers, namely :

(i) To appoint, from time to time [the Registrar], [Librarian], Principals of Colleges [and institutions established by the University], and such Professors, Readers, Lecturers and other members of the teaching staff as may be necessary, on the recommendation of [Selection Committee] constituted for the purpose :

[Provided that no action shall be taken by the Executive Council in respect of the number, qualifications, and the emoluments of teachers otherwise than after consideration of the recommendations of the Academic Council ;]

[(ii) to appoint members of the administrative staff or to delegate the power of appointment to such authority or authorities, or officers as the Executive Council may, from time to time, by resolution, either generally or specially direct ;]

[(ii-A) to grant leave of absence to any officer of the University, other than the Chancellor, the Pro-Chancellor and the Vice-Chancellor, and to make the necessary arrangements for the discharge of functions of such officer during his absence ;]

- (iii) to manage and regulate the finances, accounts, investments, property, business, and all other administrative affairs of the University and, for that purpose, to appoint such agents as it may think fit;
- (iv) to invest any money belonging to the University, including any unapplied income, in such stocks, funds, shares or securities, as it shall, from time to time, think fit, or in the purchase of immovable property in India, with the like power of varying such investment from time to time;
- (v) to transfer or accept transfers of any movable or immovable property on behalf of the University;
- (vi) to provide the buildings, premises, furniture, apparatus, and other means needed for carrying on the work of the University;
- (vii) to enter into, vary, carry out, and cancel contracts on behalf of the University;
- (viii) to entertain, adjudicate upon, and, if thought fit, to redress any grievances of the officers of the University, the teaching staff, [the students] and the University's servants, who may, for any reason, feel aggrieved, otherwise than by an act of the Court;
- [ix) to appoint Examiners and Moderators and, if necessary, to remove them, and to fix their fees, emoluments and travelling and other allowances after considering the recommendations of the Standing Committee of the Academic Council and the recommendations, if any, of the Academic Council.] ;
- (x) to maintain a register of donors to the University;
- (xi) to select a Common Seal for the University, and provide for the custody and use of the Seal;
- [(xii) to make such special arrangements as may be necessary for the residence and discipline of women students, after consulting the Advisory Board of Women's Education, the establishment and functions of which are to be prescribed by the Ordinances ;] and
- [(xiii) to exercise such other powers and perform such other duties as may be conferred or imposed on it by this Act or the Statutes.]

18-A. [Omitted.]

19. Academic Council.—(1) The [Academic Council] shall consist of the following [members] namely—

- [(i) Vice-Chancellor ;
- (ii) Pro-Vice-Chancellor ;
- (iii) Deans of Faculties ;
- (iv) Heads of Teaching Departments ;
- (v) not more than four Professors who are not Heads of Teaching Departments, to be members in rotation ;
- (vi) Principals of Colleges ;
- (vii) Provost ;

(viii) Chief Proctor ;

(ix) Librarian ;

(x) not more than four Professors who are not Heads among themselves by the teachers, other than those falling under items (i) to (ix) :

Provided that at least one such teacher shall be a Reader and one a Lecturer.

(xi) Six persons, not being employees of the University, co-opted by the Academic Council for their special knowledge.]

(2) [All members of the Academic Council, other than *ex-officio* members, shall hold office for a term of three years :

Provided that a member elected or co-opted in his capacity as a member of a particular body or as the holder of a particular post shall hold office so long only as he continues to be a member of that body or the holder of that post.]

(3) [Twenty members of the Academic Council shall form a quorum.]

20. [*] Subject to the Act, the Statutes and [the Ordinances, the Academic Council] shall, in addition to all other powers vested in it, have the following powers, namely—

(i) To report on any matter referred to or delegated to [it] by the Court or the [Executive] Council ;

[(ii) to make recommendations to the Executive Council with regard to—

(a) the creation of teaching posts in the University and the Colleges and the abolition thereof ; and

(b) the classification of the posts referred to in sub-item (a) and the emoluments and the duties attaching thereto ;]

(iii) to formulate and modify or revise schemes for the organization of Faculties, and to assign to such Faculties their respective subjects and also to report to the [Executive] Council as to the expediency of the abolition or sub-division of any faculty or the combination of one Faculty with another ;

(iv) to promote research within the University and to require, from time to time, reports on such research ;

[(v) to consider proposals submitted by the Faculties ;]

[(vi) to recognise diplomas and degrees of other Universities and institutions and to determine their equivalence with the diplomas and degrees of the Banaras Hindu University ;]

[(vii) to make special arrangements, if any, for the teaching of women students and for prescribing for them special courses of study, after consulting the Advisory Board of Women's Education ;]

[(viii) to make such arrangements for the instruction and examination of persons, not being members of the University, as may be necessary ; and]

[(ix) to perform in relation to academic matters, all such duties and to do all such acts as may be necessary for the proper carrying out of the provisions of the Act, the Statutes, and the Ordinances.]

21. Standing Committee of the Academic Council.—(1) The [Standing Committee of the Academic Council] shall be the executive body of the [Academic Council,] and shall consist of the Vice-Chancellor, the Pro-Vice-Chancellor, [Deans of Faculties and Principals of fourteen Colleges in rotation according to seniority.]

[(2) The Principals of Colleges shall be members of the Standing Committee of the Academic Council for a term of three years.]

[(3) Seven members of the Standing Committee of the Academic Council shall form a quorum.]

22. Duties of the Standing Committee of the Academic Council.—[The duties of the Standing Committee of the Academic Council shall be, subject to the revision and control of the Academic Council] :—

- [(i) to fix, subject to any conditions accepted by the Court, the time, mode and conditions of competition for fellowships, scholarships and other prizes, and to award the same ;]
- [(ii) to conduct examinations in conformity with the Ordinances and to fix dates for holding them ;]
- [(iii) to declare the results of the various University examinations, or to appoint committees or officers to do so, and to make recommendations regarding the conferment or grant of degrees, honours, diplomas, licences, titles and marks of honour ;]
- [(iv) to award stipends, scholarships, medals, prizes and to make awards in accordance with the Ordinances and such other conditions as may be attached to the awards ;]
- [(v) to make recommendations to the Executive Council in regard to the appointment of examiners and, if necessary, their removal and the fixation of their fees, emoluments and travelling and other allowances and the appointment of Boards of Examiners and Moderators ;]
- [(vi) to appoint, whenever necessary, Inspectors or Boards of Inspectors for inspecting Colleges applying for admission to the privileges of the University ;]
- [(vii) to publish lists of prescribed or recommended text-books and to publish syllabuses of the prescribed courses of study ;]
- [(viii) to prepare such forms and registers as are, from time to time, prescribed by the Ordinances ;]
- [(ix) to appoint Committees for admissions to the University ;] and
- (x) to perform all such duties and to do all such acts, as may be necessary for the carrying out of the [decisions and directions of the Academic Council and to perform all such functions as may be delegated to it by the Academic Council under the Act, the Statutes or the Ordinances.]

22-A. Finance Committee.—(1) The [×] Finance Committee shall consist of [the following members, namely :]

(i) Vice-Chancellor (Chairman) ;

(ii) Pro-Vice-Chancellor ;

(iii) two persons nominated by the Visitor ;

(iv) two persons, who are not employees of the University, elected by the Court, at least one of whom shall be a person who is not a member of the Executive Council.

(v) The Treasurer (Convener).]

(2) Three members of the (×) Finance Committee, shall form a quorum.

[(3) All members of the [×] Finance Committee, other than *ex-officio* members shall hold office for a term of three years.]

[(4) The Vice-Chancellor shall preside at meetings of the [×] Finance Committee. In the absence of the Vice-Chancellor, the Treasurer shall preside at a meeting thereof.]

[(5) A member of the [×] Finance Committee shall have the right to record a minute of dissent if he dissents from his colleagues.]

[(6)] The [×] Finance Committee shall meet at least twice every year to examine accounts and to scrutinise proposals for expenditure.

[(7)] The annual accounts and financial estimates of the University prepared by the [Treasurer] shall be laid before the Finance Committee for [consideration and comments] and thereafter [submitted] to the [Executive] Council for approval.

(8) The [×] Finance Committee shall fix limits for the total recurring expenditure and the total non-recurring expenditure for the year, based on the income and resources of the University (which, in the case of productive works, may include the proceeds of loans). No expenditure shall be incurred by the University in excess of the limits so fixed.

(9) No expenditure other than that provided for in the budget shall be incurred by the University without the approval of the [×] Finance Committee.

23. Faculties.—(1) The University shall include the Faculties of (1) Oriental Learning, (2) Theology, 3) Arts, (4) Science, Pure and applied, (5) Law, and, as soon as the Visitor is satisfied that sufficient funds are available for the purpose of, (6) Technology, (7) Commerce, (8) Medicine and Surgery, (9) Agriculture, and [such] other Faculties [as may be established by the Statutes.]

(2) [Omitted.]

24. Constitution of Faculties.—(1) Each Faculty shall consist of [the following members, namely :]

(i) Dean of the Faculty, who shall be the Chairman ;

(ii) Principals of all Colleges teaching subjects assigned to the Faculty ;

(iii) All Professors in the Faculty ;

- (iv) One Reader and one Lecturer, by rotation according to seniority, from each Department in the Faculty;
 - (v) One teacher concerned, by rotation according to seniority, from each Women's College:
- Provided that the College provides instruction in any of the subjects assigned to the Faculty;
- (vi) Persons not connected with the University having expert knowledge of the subject or subjects concerned co-opted by the Faculty, one for each Department of the Faculty; and
 - (vii) Five members elected by the Academic Council for their special knowledge of any subject assigned to the Faculty or of any allied branch;

(2) All members of any Faculty, other than *ex-officio* members, shall hold office for a term of three years;

(3) The conduct of the meetings of [a] Faculty, [the quorum required for each Faculty and the constitution of the Boards of Studies shall be prescribed by the Ordinances.]

25. Appointment and Term of office of the Dean and members of Faculties.—[1. Every Head of the Department who is a Professor shall, by rotation according to seniority, for a period of two years act as the Dean of the Faculty; provided that if in any Faculty there is no Professor, the seniormost Reader shall act as the Dean and if there is no Reader, the Vice-Chancellor or the Pro-Vice-Chancellor, if so designated by the Vice-Chancellor, shall act as the Dean.

Explanation.—For the purposes of this clause, seniority shall be determined according to the following rules, namely :

- (a) if there are more persons than one who rank equally for the purposes of seniority, that person shall be deemed to be senior to the others who has for the longest period been continuously the Head of a Department;
- (b) if there are more persons than one who rank equally for the purposes of seniority by reason of their being continuously the Heads of Departments, that person shall be deemed to be senior to the others who has for the longest period been continuously a Professor or Reader as the case may be]

26. Powers of the Faculties.—The Faculties shall have such powers, and shall perform such duties, as may be assigned to them by the Statutes and the [Ordinances,] and shall, from time to time, appoint such and so many Boards of Studies, in different branches of knowledge as may be prescribed by the [Ordinances]. They shall also consider and make such recommendations to the [Academic Council] on any question pertaining to their respective sphere of work as may appear to them necessary, or on any matter referred to them by the [Academic Council].

[**26-A.**—(1) Each Faculty shall consist of such Departments as may be assigned to it by the Ordinances.

(2) No Department shall be established or abolished except by the Statutes :

Provided that all Departments which have been established in

accordance with the Act, the Statutes or the Regulations as in force immediately before the commencement of the Benares Hindu University (Amendment) Act, 1951, shall be deemed to be Departments established by these Statutes.

(3) Each Department shall consist of the following members, namely :—

- (i) Teachers of the Department ;
- (ii) Persons conducting research in the Department ;
- (iii) Dean of the Faculty or Deans of the Faculties concerned ;

(4) Each Department shall have a Head who may be a Professor or, if there is no Professor, a Reader and whose duties and functions, and terms and conditions of appointment shall be laid down by the Ordinances :

Provided that if there are more Professors or, as the case may be, Readers than one in any Department, no person shall be appointed to be the Head of any Department except in accordance with the provisions made in respect thereof by the Ordinances :

Provided further that if there is no Professor or Reader in a Department, the Dean of the Faculty concerned shall act as the Head of that Department.

[26-B.—(1) The establishment of colleges and institutions and the abolition thereof shall be governed by the Statutes :

Provided that all colleges and institutions which have been established in accordance with the Act, the Statutes or the Regulations in force immediately before the commencement of the Benares Hindu University (Amendment) Act, 1951, shall be deemed to be colleges and institutions established by these Statutes.]

[26-C.—(1) Colleges and other institutions within a radius of fifteen miles from the main temple of the University may be admitted to such privileges of the University as the Executive Council may decide on the following conditions, namely -

(i) Every such college or institution shall have a regularly constituted Managing Body, consisting of not more than twenty persons, approved by the Executive Council and including, among others, at least two representatives of the University and at least three representatives of the teaching staff, of whom the Principal of the college or institution shall be one ;

(ii) Every such college or institution shall satisfy the Executive Council on the following points ;

(a) the suitability and adequacy of its accommodation and equipment for teaching,

(b) the qualifications and adequacy of its teaching staff and the conditions of their service,

(c) the arrangements for the residence, welfare, discipline and supervision of its students, and

(d) such other matters as are essential for the maintenance of the standards of University education ; and

- (iii) No college or institution shall be admitted to any privileges of the University except on the recommendation of the Academic Council made after considering the report of a Committee of Inspection appointed for the purpose by the Standing Committee of the Academic Council.
- (ii) Honorary Professors, if any, attached to the Department ; and
- (v) Such other persons as may be members of the Department in accordance with the provisions of the Ordinances.

(2) Appointments to the teaching staff of such college or institution shall be made on the recommendation of a Selection Committee which shall include the Principal unless the post to be filled is that of the Principal], at least one of the representatives of the University on the Managing Body and one expert nominated by the Standing Committee of the Academic Council.

(3) Every such college or institution shall be inspected at least once every year by a Committee appointed by the Standing Committee of the Academic Council, and the report of that Committee shall be submitted to the Standing Committee of the Academic Council which shall forward the same to the Executive Council with such recommendations as it may deem fit to make. The Executive Council, after considering the report and the recommendations, if any, of the Standing Committee of the Academic Council, shall forward a copy of the report to the Managing Body of the college or institution with such remarks, if any, as it may deem fit, for suitable action.

(4) The Executive Council may, after consulting the Academic Council, withdraw any privileges granted to a college or institution if at any time it considers that the college or institution is not fulfilling the requisite conditions :

Provided that before any privileges are so withdrawn the Managing Body shall be given an opportunity to represent to the Executive Council why such action should not be taken.

(5) Subject to the conditions set forth above, the Ordinances may prescribe any other conditions which may be considered necessary and also the procedure for the admission of colleges and institutions to the privileges of the University and for the withdrawal of those privileges.]

27. Convocations. Convocations of the University for the conferring of degrees, or for other purposes, shall be held in a manner to be prescribed by [Ordinances.]

28. Committees.—The Court, the [Executive Council], [the Academic Council, the Standing Committee of the Academic Council] and the Faculties may, from time to time, appoint such and so many standing and special Committees or Boards as may seem to them fit, and may, if they think fit, place on them persons who are not members of the appointing bodies. Such Committees may deal with any subject delegated to them, subject to subsequent confirmation by the appointing body.

29. Selection Committee.—[(1) The Selection Committee for any appointment specified in column (1) of the Table hereto annexed shall consist of the Vice-Chancellor, the Pro-Vice-Chancellor, a nominee of the Visitor and the persons specified in the corresponding entry in column (2) of the said Table.

THE TABLE

(1)	(2)
Professor	<ul style="list-style-type: none"> (i) The Dean of the Faculty, (ii) the Head of the Department concerned, if he is a Professor, (iii) three persons not connected with the University nominated by the Standing Committee of the Academic Council for their special knowledge of, or interest in, the subject with which the Professor will be concerned.
Reader	<ul style="list-style-type: none"> (i) The Dean of the Faculty,
Lecturer	<ul style="list-style-type: none"> (ii) the Head of the Department concerned. (iii) two persons not connected with the University, nominated by the Standing Committee of the Academic Council, for their having special knowledge of, or interest in the subject with which the person to be appointed will be concerned.
Registrar	<ul style="list-style-type: none"> (i) Treasurer, (ii) two members of the Executive Council nominated by it].
	<p>[(2) The Vice-Chancellor or, in his absence, the Pro-Vice-Chancellor shall preside at the meetings of a Selection Committee.]</p>
	<p>[(3) The meetings of a Selection Committee shall be convened by the Vice-Chancellor or, in his absence, by the Pro-Vice-Chancellor.]</p>
	<p>[(4) The Selection Committee shall consider and submit to the Executive Council recommendations as to the appointments referred to it. If the Executive Council is unable to accept the recommendations made by the Committee, it shall record its reasons and submit the case to the Visitor for final orders.]</p>

[29-A. Alumni Association.—(1) There shall be an Alumni Association established for the Banaras Hindu University.]

(2) The subscription for membership of the Association shall be prescribed by the Ordinances.

(3) No member of the Association shall be entitled to vote or stand for election unless he has been a member of the Association for at least one year prior to the date of the election and is a graduate of at least five years' standing of the University :

Provided that the condition relating to the completion of one year's membership shall not apply in the case of the first election after the commencement of the Benares Hindu University (Amendment) Act, 1951.]

30. Acts during vacancies.—[No act or proceeding of any authority or body of the University shall be invalid by reason only of the existence of any vacancy among its members or any defect in the constitution thereof.

31. Elected chairman to preside where no provision made by the Statute.—Where, by the Statutes or [Ordinances] no provision is made for a president or chairman to preside over a meeting of any University authority, Board or Committee, or when the president or chairman so provided for is absent, the members present shall elect one of their members to preside at the meeting.

32. Re-appointment and re-election.—[Save, as otherwise provided in the Act, the Statutes or the Ordinances,] every officer of the University and every member of any University authority, whose term of office or of membership has expired, shall be eligible for re-appointment or re-election, as the case may be.

33. Resignation. [(1) Any member, other than an *ex-officio* member of the Court, the Executive Council, the Academic Council, or any other University authority may resign by letter addressed to the Registrar, and resignation shall take effect as soon as such letter is received by the Registrar.

(2) Any officer of the University, (whether salaried or otherwise), other than the Dean, may resign his office by letter addressed to the Registrar :

Provided that such resignation shall take effect only on the date from which the same is accepted by the authority competent to fill the vacancy.]

34. Removal.—[(1) Any member of the Court, the Executive Council, or the Academic Council, may be removed by a resolution of the Court, the Executive Council or the Academic Council, as the case may be, passed by a majority of not less than two-thirds of its members on either of the following grounds, namely :—

- (i) the member has become incapable of performing his duties ;
- (ii) the member has been convicted by a Court of law of an offence which, in the opinion of the Court, the Executive Council or the Academic Council, as the case may be, involves moral turpitude.

(2) Notwithstanding anything contained in the terms of his appointment, any officer of the University, salaried or otherwise, may be removed from that office by the authority which is competent to fill the vacancy on either of the following grounds, namely :—

- (i) the officer has become incapable of performing his duties ;
- (ii) the officer has been convicted by a Court of law of an offence which, in the opinion of the Court, the Executive Council or the Academic Council, as the case may be, involves moral turpitude :

Provided that nothing in this clause shall be deemed to affect any rights accruing to an officer appointed on contract in accordance with the terms of that contract.]

[34-A. Notwithstanding anything contained in the Statutes, no person who is not ordinarily resident in India shall be eligible to be an officer of the University or a member of any authority of the University].

34-B.—(1) Whenever, in accordance with these Statutes, any person is to hold an office or be a member of any authority of the

University by rotation, according to seniority, such seniority shall be determined according to the length of continuous service of such person in his grade or post, as the case may be, and in accordance with such other principles as the Executive Council may, from time to time, prescribe.

(2) It shall be the duty of the Registrar to prepare and maintain, in respect of each class of persons, to whom the provisions of this Statute apply, a complete and up-to-date seniority list in accordance with the provisions of the foregoing clause.

(3) If two or more persons have equal length of continuous service in a particular grade or post, or the relative seniority of any person or persons is otherwise in doubt, the Registrar may on his own motion, and shall, at the request of any such person, submit the matter to the Executive Council, whose decision thereon shall be final.

34-C. Notwithstanding anything contained in these Statutes, a person who holds any post in the University or is a member of any authority or body of the University in his capacity as a member of a particular authority or body or as the holder of a particular appointment shall hold office so long only as he continues to be a member of that particular authority or body or the holder of that particular appointment, as the case may be.

Statutes made by the Court under sub-section (3) of Section 17 of the Act¹ and adapted and modified as mentioned above

35. Notice of Annual Meetings.—Notices of the annual [×] Meeting of the Court shall be issued by the Secretary, at least 30 days before the date of the meeting, with an Agenda paper, and, no business, not arising out of matters noted or mentioned in such Agenda paper, shall be considered unless the consent of at least two-thirds of the members of the Court present at the meeting be obtained thereto.

36. Notice of proposals or amendments.—Every member who intends to bring forward any special business at an Annual Meeting, or to propose any person for election as Chancellor, Pro-Chancellor, [**] or as a member of the Court or of the Executive Council, shall give notice of such business, or of the name of the person to be proposed, to the Secretary, at least 20 days before the day appointed for such meeting. Every member who intends to propose an amendment shall give notice thereof to the Secretary ten days before the date fixed for the meeting.

37. Notice of Special General Meetings and business to be transacted.—[A notice of twenty-one days] of any Special [×] Meeting, stating generally the nature of the business to be transacted, shall be sent to each member of the Court and no such meeting shall be competent to transact any business other than that mentioned in the notice or directly arising out of it. [Any member desiring to send a proposal relating to the nature of the business specified in the notice shall send such proposal to the Secretary so as to reach him at least ten days before the meeting.]

38. Procedure at meetings to be regulated by Rules to be made by the Court.—The procedure at meetings shall be in accordance with Regulations to be made by the Court in that behalf.

1. Received the approval of the
Visitor under sub-section 5 of

Section 17 of the Act on the 12th
and the 30th August, 1918.

39. Contracts.—Contracts made by or on behalf of the University shall be valid and binding on the University if made as follows :—

- (a) Any contract which if made between private persons would by law be required to be in writing and, if required by the law in force in [×] India to be registered, may be similarly made on behalf of the University in writing under its common seal and registered, and such contract may in the same manner, be varied or discharged.
- (b) Any contract which if made between private persons would by law be required to be in writing and signed by the parties to be charged therewith, may be made on behalf of the University in writing signed by any person acting under the express or implied authority of the [Executive] Council, and such contract may, in the same manner, be varied or discharged.
- (c) Any contract which if made between private persons would by law be valid, although made verbally only and not reduced into writing, may be made either in writing or verbally on behalf of the University by any person acting under the express or implied authority of the [Executive] Council, and such contract may be in the same way varied or discharged :

Provided always that no contract exceeding Rs. 500 in amount or value shall be made except in writing.

- (d) The Executive Council shall, from time to time, appoint such person or persons as it may think proper, either by office or by name, to enter into, execute and sign contracts for and on behalf of the University, and to present them for registration and to register the same according to the law in force for the time being.

40. [Omitted.]

41. List of donors.—[The names and addresses of all persons who have paid Rs. 500 or upwards before the commencement of the Benares Hindu University (Amendment) Act, 1951, or may after such commencement pay a sum of Rs. 1,000 or upwards to the University shall, from time to time, be entered in a list kept for the purpose by the Secretary of the Court.]

Explanation.—In this Statute, the term “Secretary” means the Secretary of the Court or, in his absence for any cause or where there is no person holding the post of Secretary such person as the Vice-Chancellor may nominate to perform for the time being, the duties of the Secretary under these Statutes.

42. Registered donors. Every person whose name is entered in the said list shall be deemed to be a registered donor within the meaning of the Statutes and entitled to vote at the election.

43 to 71. [Omitted.]

72. Provision for maintenance of Central Hindu School.—[(1) The Executive Council shall make provisions for the maintenance of the Central Hindu School and other schools which have been established in accordance with the Act, the Statutes, or the Regulations in force

before the commencement of the Benares Hindu University (Amendment) Act, 1951.]

(2) [The management of such school shall be in accordance with the Ordinances to be made in this behalf.]

73 to 80. [Omitted.]

81. Properties belonging to the School to be properties of the University.—The [Schools referred to in Statute 72 and all their] buildings, properties, furniture, apparatus and books and accounts shall be the property of the University.

Statutes relating to Provident Fund made by the Court under Section 16-A of the Act¹ and amended and adapted as mentioned above

82. Every employee of the University, appointed permanently to a substantive post, carrying a salary of rupees twenty per mensem or upwards, shall, as a condition of his service, contribute to the Provident Fund six and a quarter per cent. of his salary. Such contribution shall be deducted from his salary every month. In making the deduction, fractions of a rupee of the salary shall be omitted.

83. [The University shall contribute to the Fund a sum equal to such percentage of the salary of each employee as may be approved by the Central Government. The contribution so made by the University, shall be credited to the account of such employee and charged in the University accounts under the head "Provident Fund".]

84. The amount of the deduction made from the salary of an employee under Statute 82 and the amount of the contribution made by the University under Statute 83 shall be deposited in the Post Office Savings Bank or in the Imperial Bank, as the [Executive] Council of the University may direct, in the name of the Fund as early as practicable or at any rate within three days of the date on which the payment of the salaries is made.

85. The University may, from time to time, invest such part of the Provident Fund, as may be considered expedient, in such Government securities as the [Executive] Council of the University may determine and may change the nature of the securities. All interest or profit realized from the securities or from any deposit or account arising out of the Fund, shall, after deducting the incidental expenses of investment or realization, be credited in the Provident Fund account to be distributed rateably in the account of each contributor.

[85-A.] On a written application from a subscriber to the Provident Fund and with the approval of the Executive Council the University may allow premia on the Life Insurance policy of the subscriber to be paid out of the subscriber's share in his Provident Fund. In all such cases the Life Insurance policy for which the premia are so paid shall be assigned in favour of the University. On the retirement of the subscriber from the service of the University, the policy shall be re-assigned to him by the University. In case of maturity of the policy during the pendency of the service of the subscriber in the University, the full amount of the policy shall be credited to the Provident Fund of the subscriber. In the case of the death of the subscriber, during the service of the University, the full

1. Received the approval of His Excellency the Visitor under sub-section 5 of Section 17 of the

Act on the 27th February, 1936
vide letter no. F/173 dated 27th February, 1936.

amount of the policy shall be paid to the legal representative of the deceased entitled to the Provident Fund.]

86. The amount at the credit of any employee shall be payable : -

- (a) on the death of the employee to the person or persons nominated by him or, when no such nomination is made, to his legal heir or heirs;
- (b) on his ceasing to be in the service of the University to such employee provided : --
- (i) that no employee of the University, who has been dismissed for what is considered by the [Executive] Council as gross misconduct, shall, if the [Executive] Council so directs be entitled to the benefit or to receive any part or any sum at any time contributed by the University to the Fund or the interest or profit thereon ;
- (ii) that if any employee resigns his appointment before putting in five years' service, the University may withhold the contribution allotted to him, together with the interest theron, and pay to the employee only the balance at his credit without such contribution or the interest on or profit from contribution.

87. The University shall not be entitled to recover, from the amount to the credit of any such employee in the said fund on account of contributions made by him thereto (including interest on or profit from such contributions), any sum on account of any loss or damages sustained by the University through the misconduct or negligence of any such employee or any other sum due by him. Any such loss or damage sustained by the University or other liability incurred by the employees to the University, shall, however, be recoverable from the contribution made by the University to his account including interest or profit thereon.

88. Any contribution and interest or profit, withheld under these Statutes, shall lapse to the University.

89. In case of urgent necessity, which in the opinion of the [Executive] Council justifies the course, the University may allow a depositor an advance of a sum, not exceeding his salary for three months, out of the amount contributed by him with interest thereon (excluding the contribution of the University and the interest or profit thereof). The advance will be recovered by such number of monthly instalments, not exceeding twenty-four as the [Executive] Council may fix, and shall be recovered by deduction from the salary payable by the University to such employee. The amount of such instalments shall be fixed in round number, and the deductions shall commence from the first payment of a full month's salary, after such advance has been made, and the last instalment shall cover the entire balance then due.

[Provided that if an advance is required for the purpose of building or purchasing a house, the maximum limit of the advance may

1. Modified by Resolution No. 12 i (b) of the Court held on 27-11-1943. Received the approval of the Visitor

on October 16, 1944 under G. O. No. 2571/4-IV—GS/44.

be equal to twelve months' salary of the subscriber out of his own contribution to the Fund, to be repaid in such instalments, not exceeding forty-eight, as the Executive Council may determine]

An employee may at his option pay at any time any additional sum above the amount fixed. No subsequent advance will, however, be made until the lapse of three months from the date when the previous advance has been fully repaid.

90. An employee, who is on leave on full pay, shall continue to pay his contribution to the Provident Fund and may do so at his option, if he is on leave on less than full pay.

91. A separate account in Form A shall be annually kept in the office of the University on account of every employee contributing to the Provident Fund, and a copy of this account shall be furnished to every such employee at the end of each financial year and on his ceasing to be an employee.

FORM A

*Provident Fund, Banaras Hindu University Deposit Account for the year
ending the 31st of March 195 .*

NUMBER OF ACCOUNT		NAME OF SUBSCRIBER					APPOINT- MENT		
Date	Opening Balance	Deduction from salary	Deposits Contribution by B. H. U.	Withdrawal	Repayment	Closing Balance	Rateable interest or profit added at the end of the year	Total at credit	Remarks
1	2	3	4	5	6	7	8	9	10

92. Amounts credited or debited to the Provident Fund shall on the same day be posted to the Provident Fund Ledger in Form B, given below. The figures for column 6 in the ledger will be calculated yearly as also the net balance of each account entered in columns 7 and 10.

FORM B

FORM B
Provident fund ledger, Banaras Hindu University, Banaras

No voluntary deposits from employees will be credited to the Provident Fund.

93. If a depositor dies or his services otherwise terminate, his account shall be closed, and the sum due to him shall cease to bear interest or carry any profit after the expiry of the month in which his death or the termination of his services occurs.

94. When an account is closed, any sum remaining unclaimed shall be removed from the Provident Fund Ledger and transferred to a deposit account at the end of the year and be dealt with like any ordinary deposit.

95. Every employee, coming under these Statutes shall be required to sign a written declaration that he has read these Statutes and agrees to abide by them and hand over for registration in the University Office the names of the person or persons to whom he wishes the balance at his credit to be paid in the event of his death. When nominating more than one person, he may state the proportion in which the said balance may be paid to each of them respectively. In case his nominee or any of his nominees is a minor, he should state the date of his birth; and the payment shall be made to his next friend or guardian, who may be authorised by law to receive payment on his behalf while he is a minor.

The depositor may, from time to time, add to or change his nominee or nominees and the proportion in which the same is to be distributed, by written application to the University.

A register of such nominees shall be kept in the University Office in Form C given below :—

FORM C

Name of Depositor	Name and address of his nominee with date of birth and the name of his next friend if he is a minor	Signature of Depositor	Signature of the Pro-Vice-Chancellor B. H. U.
1	2	3	4

96. Notwithstanding anything contained in these Statutes, no employee of the University will be entitled to the benefit of these Statutes, who is otherwise entitled to a pension or on whose account the University contributes towards his pension and leave allowance or who has been appointed by the University on a consolidated salary on special terms.

Statutes relating to Gratuity and Compassionate Fund made by the Court¹.

97. The University shall set apart a sum of Rs. 1,000² every year and invest the same at interest in order to form a fund for the payment

- Received the approval of the Visitor under sub-section 5 of Section 17 of the Act on the 18th of March, 1937. (vide G. O. no. 229-G).
- Modified by Resolution no. 7(b) of

Court dated 16th December, 1946.
Received approval of Visitor on 20th September, 1947, (vide G. O. no. A-723(XV)).

of gratuities to the servants or employees of the University, and for the payment of compassionate allowance to their families, as hereinafter provided.

98. If the unspent balance of that Fund at the close of any financial year exceeds Rs. 3,000 the University may stop further payment to the fund under the preceding Statutes till it falls below that amount or reduce the amount payable thereunder so as not to exceed that amount.

99. No gratuity shall be payable to a servant or employee of less than ten years' standing or getting a salary of Rs. 20 per mensem or over.

100. Subject to Statute 99, a gratuity equal to half month's pay for every completed year of service may be paid to a permanent servant or employee of the University, if he has been permitted to retire from the service of the University on account of his physical incapacity to continue in its service provided that the total amount of such gratuity shall not exceed Rs. 240 in any case.

101. If such servant or employee dies while in the service of the University after completing a service of ten years such compassionate allowance, not exceeding the pay of such servant or employee for three months, may be paid to such members of his family, who may have been dependent on him for their livelihood as the [Executive] Council may, in view of the circumstances of each case, determine.

102. The payment of the gratuity or compassionate allowance may be made either in a lump sum or by instalments or in such other manner as the [Executive] Council may determine.

THE BENGAL, AGRA AND ASSAM CIVIL COURTS ACT, 1887

(Act No. XII of 1887)

(As Modified upto Act IV of 1936 and Adapted upto Adaptation Order, 1951.)

CONTENTS

Sections	Sections
	CHAPTER I
	PRELIMINARY
1. Title, extent and commencement.	11. Transfer of proceedings on vaca- tion of office of Civil Judge. <i>[Repealed.]</i>
2. Repeal.	Power to fix local limits of jurisdiction of Courts.
	14. Place of sitting of Courts.
CHAPTER II	15. Vacations of Courts.
CONSTITUTION OF CIVIL COURTS	15. Seals of Courts.
3. Classes of Courts.	17. Continuance of proceedings of Courts ceasing to have jurisdic- tion.
4. Number of District Judges, Civil Judges and Munsifs.	
5. <i>[Repealed.]</i>	
6. Vacancies among District or Civil Judges.	
7. <i>[Repealed.]</i>	
8. Additional Judges.	
9. Administrative control of Courts.	CHAPTER III
10. Temporary charge of District Court.	ORDINARY JURISDICTION
	18. Extent of original jurisdiction of District or Civil Judge.
	19. Extent of jurisdiction of Munsif.

20. Appeals from District and Additional Judges.
 21. Appeals from Civil Judges and Munsifs.

**CHAPTER IV
SPECIAL JURISDICTION**

22. Power to transfer to Civil Judges appeals from Munsifs.
 23. Exercise by Civil Judge or Munsif of Jurisdiction of District Court in certain proceedings.
 24. Disposal of proceedings referred to in last foregoing section.
 25. Power to invest Civil Judges and Munsifs with Small Cause Court jurisdiction.

**CHAPTER V
[Repealed.]**

**CHAPTER VI
[Repealed.]**

**CHAPTER VII
SUPPLEMENTAL PROVISIONS**

36. Power to confer powers of Civil Courts on officers.
 37. Certain decisions to be according to Native law.
 38. Judges not to try suits in which they are interested.
 39. Subordination of Courts to District Court.
 40. Application of Act to Provincial Courts of Small Causes.

[Received the assent of the Governor-General on the 11th March, 1887]

**AN ACT TO CONSOLIDATE AND AMEND THE LAW RELATING TO
CIVIL COURTS IN BENGAL, AGRA AND ASSAM**

Whereas it is expedient to consolidate and amend the law relating to Civil Courts in Bengal, Agra and Assam ;

It is hereby enacted as follows :—

Prefatory Note :—For Statement of Objects and Reasons, See Gazette of India 1881, Pt. V. p. 1455; for Preliminary R. S. Com., See *ibid*, 1886, Pt. V. p. 957, and for Final R. S. Com., see *ibid*, 1887, Pt. V. p. 55; and for Proceeding in Council, see *ibid*. Supplement, 1887, pp. 1132, 1169, 1414 and 1423, supplement, 1886, p. 1458, and Pt. VI, 1881, pp. 31 and 33.

For S. O. R. of Act V of 1925 see *Gazette*, 1925, Pt. VIII, p. 799, and for discussion see L. C. Pro dated December 1^b, 1925, in Vol XXVI, p. 152.

CHAPTER I

PRELIMINARY

1. Title, extent and commencement.—(1) This Act may be called the Bengal, [Agra] and Assam Civil Courts Act, 1887.

(2) It extends to the territories [which were on the 11th of March, 1887] respectively administered by the Governor of Bengal, the [Governor of the Uttar Pradesh] and the Governor of Assam, except such portions of those territories as for the time being are not subject to the ordinary civil jurisdiction of the High Courts * * * * *

(3) It shall come into force on the first day of July, 1887.

Legislative changes.—The word [Agra] was substituted for the word “North Western Provinces” by Section 2 of Act XVI of 1911.

The words [which....1887. were substituted for the words “for the time being” and the words [Governor of Uttar Pradesh] for the words “Lieutenant-Governor of the North Western Provinces” by A. O. 1937 and 1950.

The words “and except the Jhansi Division” between the words “courts” and “and” were repealed by Section 9 of Act XX of 1890.

2. Repeal.—(1) * * *

(2) * All Courts constituted, appointments, nominations, rules and orders made, jurisdiction and powers conferred and lists published under the Bengal Civil Courts Act, 1871, or any enactment thereby repealed, or purporting expressly or impliedly to have been so constituted, made, conferred and published, shall be deemed to have been

respectively constituted, made, conferred and published under this Act ; and

(3) Any enactment or document referring to the Bengal Civil Courts Act, 1871, or to any enactment thereby repealed, shall be construed to refer to this Act or to the corresponding portion thereof.

Legislative changes.—Sub-section (1) and the word “But” at the beginning of sub-section (2) were repealed by Act XII of 1891, Section 2 and Schedule, I.

CHAPTER II

CONSTITUTION OF CIVIL COURTS

3. Classes of Court.—There shall be the following classes of Civil Courts under this Act, namely :—

- (1) The Court of the District Judge ;
- (2) The Court of the Additional Judge ;
- (3) The Court of the [Civil] Judge ; and
- (4) The Court of the Munsif.

Legislative changes.—The word [Civil] in its application to U. P. was substituted for the word ‘subordinate’ in Sections 3, 4, 6, 10, 11, 13, 18, 21, 22, 23, 24, 25, 27, 31 and 36 by U. P. Act IV of 1936.

Civil Court.—An officer of the Santhal Parganas is a Civil Court¹.

District Judge—if includes Additional :—The word District Judge as used in Section 7 (2) (b) of the Industrial Disputes Act would also include an Additional District Judge, as none of the definitions in the General Clauses Act, or Assam General Clauses Act or Civil Procedure Code or Bengal, Agra and Assam Civil Courts Act restrict the meaning of the District Judge².

4. Number of District Judges.—The [State Government] may alter the number of District Judges, [Civil] Judges and Munsifs now fixed.

Legislative changes.—Section 4 was substituted by Act XXXVIII of 1920, Section 2 and Schedule 1. See also under Section 4.

5. Civil Judges and Munsifs.—[Number of Munsifs.] *Repealed by Act IV of 1914. Section 2 and Schedule, Part. I.*

6. Vacancies among District or Civil Judges.—(1) Whenever the office of District Judge or [Civil] Judge is vacant by reason of the death, resignation or removal of the Judge or other cause, or whenever [an increase in the number of District or [Civil] Judges has been made under the provisions of Section 4], the [State Government] or, as the case may be, the High Court may fill up the vacancy or appoint the Additional District Judge or [Civil] Judges. * * *

(2) Nothing in this section shall be construed to prevent a [State Government] from appointing a District Judge or [Civil] Judge, to discharge, for such period as it thinks fit in addition to the functions devolving on him as such District Judge or [Civil] Judge, all or any of the functions of another District Judge or [Civil] Judge, as the case may be.

Legislative changes :—The words [an increase.....Section 4] were substituted for the words “The G.-G.-in-C. has sanctioned an increase of the number

1. *Dungaram Marwary v. Raj Kishore Deo*, 18 C 153, *See also K. Roy v. S. B. Das*, 54 A 374.

2. *G. C. Bezbarua v. State of Assam*, 1954 Assam 161.

of District Judges or subordinate Judges" by Act XXXVIII of 1920, Section 2 and Schedule I. The words [State Government....Court] were substituted for the words "Local Government" and the words "as the case may be" at the end of Section 6 (1) were omitted by A. O. 1937 read with A. O. 1950. See also under Section 3 and Section 4.

District Judge.—A District Judge is also a Sessions Judge. If he is put in charge of the sessions work in another District, he cannot be regarded as a District Judge of that district to enable him to dispose of Civil cases³.

7. [*Vacancies among Munsifs.*] Repealed by the A. O.

8. **Additional Judges.**—(1) When the business pending before any District Judge requires the aid of Additional Judges for its speedy disposal, the [State Government] may, [having consulted] the High Court * * * * appoint such Additional Judges as may be requisite.

(2) Additional Judges so appointed shall discharge any of the functions of a District Judge which the District Judge may assign to them, and, in the discharge of those functions they shall exercise the same powers as the District Judge.

Legislative changes.—The words [State Government] for the words "Local Government" and the words [having consulted] for the words "upon the recommendation of" were substituted by A. O. 1937 read with A. O. 1950.

The words "and with the previous sanction of the G.G-in-Council" between the words "Court" and "appoint" were repealed by Section 3 of Act XVI of 1911.

Order of Transfer.—The order should be recorded in the order sheet of each particular case transferred.⁴

Additional Judge.—The Additional Judge is to exercise powers that are assigned to him by the District Judge, who can transfer any case to him⁵. He can exercise powers under Section 92 C. P. C.⁶, and can also hear cases under the Land Acquisition Act transferred to him⁷.

9. **Administrative control of courts.** Subject to the superintendence of the High Court, the District Judge shall have administrative control over all the Civil Courts under this Act within the local limits of his jurisdiction.

10. **Temporary charge of District Court.**—(1) In the event of the death, resignation or removal of the District Judge, or of his being incapacitated by illness or otherwise for the performance of his duties, or of his absence from the place at which his Court is held, the Additional Judge, or if an Additional Judge is not present at that place, the senior [Civil] Judge present thereat, shall without relinquishing his ordinary duties, assume charge of the office of the District Judge, and shall continue in charge thereof until the office is resumed by the District Judge or assumed by an officer appointed thereto.

(2) While in charge of the office of the District Judge, the Additional Judge or [Civil] Judge, as the case may be, may, subject to any rules which the High Court may make in this behalf, exercise any of the powers of the District Judge.

Legislative changes.—See under Section 3.

District Court—Temporary Charge—District Judge leaving the place where his court is held, cannot hear appeal. The only person who can do it is the person in charge of his office⁸.

- 3. 11 AWN 104.
- 4. *B. L. Katuryar v. R. N. Bhattacharya*, 1939 P 267.
- 5. *Mutasaddi Lal v. Mele Mal*, 34 A 205; *Ram Churan v. Mewa Ram*, 43 A 409.
- 6. *Mohabar Rahman v. Horsi Abdur Rahim*, 48 C 53.
- 7. *Jag Bandir Talugdar v. Nand Lal Sirkar*, 50 I C 798.
- 8. *Mawizzam Ali v. S. C. Pakrashi*, 1927 C 598.

11. Transfer of proceedings on vacation of office of Civil Judge.—(1) In the event of the death, resignation or removal of a [Civil] Judge, or of his being incapacitated by illness or otherwise for the performance of his duties, or of his absence from the place at which his Court is held, the District Judge may transfer all or any of the proceedings pending in the Court of the [Civil] Judge either to his own Court or to any Court under his administrative control competent to dispose of them.

(2) Proceedings transferred under sub-section (1) shall be disposed of as if they had been instituted in the Court to which they are so transferred.

(3) Provided that the District Judge may re-transfer to the Court of the [Civil] Judge or his successor any proceedings transferred under sub-section (1) to his own or any other Court.

(4) For the purposes of proceedings which are not pending in the Court of the [Civil] Judge on the occurrence of an event referred to in sub-section (1), and with respect to which that Court has exclusive jurisdiction, the District Judge may exercise all or any of the jurisdiction of that Court.

Legislative changes.—See under Section 3.

Scope.—This section applies only to pending proceedings⁹, and covers the case of abolition of a court as well¹⁰.

12. [Temporary charge of office of Munsif.] Repealed by the A. O. 1937.

13. Power to fix local limits of jurisdiction of Courts—(1) The [State Government] may, by notification in the *Official Gazette*, fix and alter the local limits of the jurisdiction of any Civil Court under this Act.

(2) If the same local jurisdiction is assigned to two or more [Civil] Judges or to two or more Munsifs, the District Judge may assign to each of them such civil business cognizable by the [Civil] Judge or Munsif, as the case may be, as, subject to any general or special orders of the High Court, he thinks fit.

(3) When civil business arising in any local area is assigned by the District Judge under sub-section (2) to one of two or more [Civil] Judges, or to one of two or more Munsifs, a decree or order passed by the [Civil] Judge or Munsif shall not be invalid by reason only of the case in which it was made having arisen wholly or in part in a place beyond the local area if that place is within the local limits fixed by the [State Government] under sub-section (1).

(4) A Judge of the Court of Small Causes appointed to be also a [Civil] Judge or Munsif is a [Civil] Judge or Munsif, as the case may be, within the meaning of this section.

(5) The present local limits of the jurisdiction of every Civil Court under this Act shall be deemed to have been fixed under this section.

Legislative changes.—The words [State Government] were substituted for the words "Local Government" throughout the Act by A. O. 1937 read with A. O. 1950. See also under Section 13.

Jurisdiction.—The local limits of the jurisdiction of a Civil Court are fixed or altered by the State Government by a notification in the official *Gazette*¹¹,

9. *Atamba Singh v. Gopal Chandra Naha*, 73 C L J 351.

10. *Gappu Lal v. Mathura Das*, 25 A

183.

11. *Raja Jagannath Prasad Singh v. Sheo Nandan Sahay*, 1921 P 152.

but the State Government cannot confer jurisdiction in matters outside its jurisdiction determined by the Central Government.¹²

Assignment -effect.—The "Assignment" means distribution of work and does not affect jurisdiction acquired under Section 13 (1)¹³, and is not the same thing as transfer of business within the meaning of Section 150 C. P. C.¹⁴. If, however, the Court of Additional Judge passing the decree is abolished and subsequently another Additional Judge is appointed, the two Courts are not the same and the latter Court cannot execute the decree¹⁵. The allotment of sub-division also does not limit jurisdiction¹⁶, and will not effect execution of decree¹⁷.

14. Place of sitting of Courts.—(1) The [State] Government may, by notification in the Official *Gazette* fix and alter the place or places at which any Civil Court under this Act is to be held.

(2) All places at which any such Courts are now held shall be deemed to have been fixed under this section.

Place—Restriction.—Holding Court away from the headquarter is most irregular and is likely to lead to failure of justice¹⁸.

15. Vacations of Courts.—(1) Subject to such orders as may be made * * * by the [State] Government * * * * the High Court shall prepare a list of days to be observed in each year as close holidays in the Civil Courts.

(2) The list shall be published in the [Official *Gazette*.]

(3) A judicial act done by a Civil Court on a day specified in the list shall not be invalid by reason only of its having been done on that day.

Legislative changes.—The words "by the G.G-in-C., in the case of the High Court at Calcutta and" between the words 'made' and 'by' and the words "in other cases" between the words 'Government' and 'the' in Section 15 (1) were omitted by A. O. 1937.

Holiday—effect.—A judicial act done on a holiday specified in the list shall not be invalid¹⁹.

16. Seals of Courts.—Every Civil Court under this Act shall use a seal of such form and dimensions as are prescribed by the [State] Government.

Note.—For scale. See Notification 'No. III/VII-847-B-5-dated August, 1, 1912, in *Gazette* 1912. Part 1, p. 722.

17. Continuance of proceedings of Courts ceasing to have jurisdiction.—(1) Where any Civil Court under this Act has from any cause ceased to have jurisdiction with respect to any case, any proceeding in relation to that case which, if that Court had not ceased to have jurisdiction, might have been had therein may be had in the Court to which the business of the former Court has been transferred.

(2) Nothing in this section applies to cases for which provision is made in Section 623 or Section 649 of the Code of Civil Procedure or in any other enactment for the time being in force.

- 12. *Maharaja Kesho Prasad Singh v. Nirmal Kumar* 57 I C 201.
- 13. *Masrab Khan v. Debnath Mali*, 1942 C 321; *K. Roy v. S. B. Das*, 1927 C 312.
- 14. *J. N. Pal v. B. K. Roy*, 1938 C 193; *Masrab Khan v. Debnath Mali* 1942 C 321.
- 15. *Champi Rai v. Pearcey Lal*, 1938 A —1937 A L J 1305.
- 16. *Suban Rai v. K. P. Singh* 1930 P 230;
- 17. *Asiruddin Mondal v. Ram Shakhi Debya*, 1925 C 679; See also *Raja Jugannath Prasad Singh v. Sheo Nandan Sahay*, 1921 P 152; *Kali Pada Mukarjee v. Dino Nath Mukarjee* 25 C 639, 17 C 799, 19 M 445, 28 C 238.
- 18. *B. Das v. P. K. Rai*, 1935 P 39—14 P 342.
- 19. *Ram Das Chakrabarty v. Official Liquidator*, 9 A 366; See also 5 A L J 106.

Note.—Section 623 of the Old Civil Procedure Code corresponds to Section 114 and Section 649 of the Old Civil Procedure Code corresponds to Order 47, Rule 1 of the present Civil Procedure Code.

Abolition of Court.—When a Court which passed the decree is abolished, the Court to which its business is transferred is competent to execute the decree²⁰.

CHAPTER III ORDINARY JURISDICTION

18. Extent of original jurisdiction of District or Civil Judge.—Save as otherwise provided by any enactment for the time being in force, the jurisdiction of a District Judge or [Civil] Judge extends, subject to the provisions of Section 15 of the Code of Civil Procedure to all original suits for the time being cognizable by Civil Courts.

Legislative changes.—See under Section 3.

District Judge or Civil Judge—Jurisdiction.—Section 15, Civil Procedure Code lays down that every suit shall be instituted in the Court of lowest grade. This, however, does not bar the trial of the suit by District or Civil Judge²¹. For Jurisdiction in appeal see the cases in the footnote²².

19. Extent of jurisdiction of Munsif.—(1) Save as aforesaid, and subject to the provisions of sub-section (2), the jurisdiction of a Munsif extends to all like suits of which the value does not exceed [two] thousand rupees.

(2) The [State] Government may, on the recommendation of the High Court, direct by notification in the Official Gazette, with respect to any Munsif named therein, that his jurisdiction shall extend to all like suits of such value not exceeding [five] thousand rupees as may be specified in the notification :

[Provided that the [State] Government may, by notification in the [Official Gazette] delegate to the High Court its powers under this section.]

Legislative changes.—The word [two] was substituted for the word 'one' in sub-section (1) and the word [five] was substituted for the word 'two' by Sections 2 and 3 of U. P. Act V of 1925. The proviso to sub-section (2) was added by Act IV of 1914, Section 2 and Schedule, Part 1.

Note.—For delegation of powers, See Notification No. 7186/VII-198, dated May, 21, 1914, in Gazette 1914, Part I, p. 616.

Mesne profits—Jurisdiction.—Where a Judge in exercise of its proper jurisdiction has passed a preliminary decree for possession and mesne profits, he has jurisdiction to pass a final decree even if the amount exceeds the pecuniary jurisdiction, as Order 20, Rule 12 confers a special jurisdiction to take cognizance of a cause of action that has arisen subsequent to institution of the suit²³.

Honorary Munsif.—In view of the U. P. Honorary Munsif Act, this section has no application to Honorary Munsifs and Benches.

Section 19 (2) Proviso.—The State Government has delegated its power under Notification No. 7118/VII-198 dated May, 21, 1914 to the High Court of Judicature at Allahabad.

- 20. *Maqbul Ahmad v. Pateshri Pratap Narain Singh*, 1929 A 677. See also 25 W R 261 (P. C.) ; 28 A 83; 27 A L J 976 and 31 C 1057.
- 21. *Nidhi Lal v. Mazar Husain*, 7 A 230.
- 22. *Sati Kinkar Sahana v. Raja Sri Sri Shub Prasad Singh*, 52 C 452;

- Bhupendra Kumar Chakravarty v. Puran Chandra Bose*, 8 I C 34; *Zafar Husain v. Khurshed Jehan*, 3 A L J 266.
- 23. *B. Bachan v. Manindra Nath Das*, 1925 C 1076 (F. B.)—53 C 14; *Dinanath Sahai v. Mayamati Kuwar*, 1921 P 118.

20. Appeals from District and Additional Judge.—(1) Save as otherwise provided by any enactment for the time being in force, an appeal from a decree or order of a District Judge or Additional Judge shall lie to the High Court.

(2) An appeal shall not lie to the High Court from a decree or order of an Additional Judge in any case in which, if the decree or order had been made by the District Judge, an appeal would not lie to that Court.

Scope.—This section deals merely with the form of appeal and does not give a right of appeal from every order of a District Judge to the High Court²⁴.

Appeal.—Value of suit below Rs. 5,000, but decree for more in case of a mortgage suit, appeal would lie to the District Judge²⁵. But if the case is decided by an Additional Judge, appeal would lie to the High Court²⁶.

21. Appeals from Civil Judges and Munsifs.—(1) Save as aforesaid, an appeal from a decree or order of a [Civil] Judge shall lie—

(a) to the District Judge where the value of the original suit in which or in any proceeding arising out of which the decree or order was made did not exceed [ten thousand rupees] and

(b) to the High Court in any other case.

(2) Save as aforesaid, an appeal from a decree or order of a Munsif shall lie to the District Judge.

(3) Where the function of receiving any appeals which lie to the District Judge under sub-section (1) or sub-section (2) has been assigned to an Additional Judge, the appeals may be preferred to the Additional Judge.

(4) The High Court may, with the previous sanction of the [State Government], direct, by notification in the Official Gazette, that appeals lying to the District Judge under sub-section (2) from all or any of the decrees or orders of any Munsif shall be preferred to the Court of such [Civil] Judge as may be mentioned in the notification, and the appeals shall thereupon be preferred accordingly.

Legislative changes.—The words [ten thousand rupees] have been substituted for the words “five thousand rupees” by U. P. Act XXIV of 1954. Also see under Section 3.

Forum of Appeal.—The amount or value of the subject matter ordinarily determines the Court of Appeal. A plaintiff cannot, however, grossly exaggerate the value and choose his own forum²⁷, e. g. where a suit for rendition of accounts was valued at Rs. 1,500, and for jurisdiction at Rs. 5,500, the valuation for purposes of jurisdiction must be deemed to be Rs. 1,500, and appeal would lie to the District Judge²⁸. But in a suit for declaration that certain property was not liable to attachment, when valuation was put below Rs. 5,000, it is open in appeal to show that the property was worth more than Rs. 5,000, and the appeal lies to the High Court²⁹. An appeal would lie directly to the High Court against an order in execution passed in a suit valued more than Rs. 5,000³⁰. Probate proceedings transferred to Civil Judge, appeal lies to High Court³¹.

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| <p>24. <i>Bibi Washihon v. Mir Nawab Ali</i>, 1925 P 138—3 P 1018. See also 19 C 275.</p> <p>25. <i>S. K. Palit v. H. C. Sadhukhan</i>, 1931 C 159; <i>Istiqam Ahmad v. Abdus Samad</i>, 1939 A 273. But See 33 CWN 614—1929 C 719.</p> <p>26. <i>Makhan Lal v. Sri Lal</i>, 34 A 382.</p> | <p>27. <i>Babar Shaw v. Mohammad Rafiq</i>, 62 I C 35 (A).</p> <p>28. <i>Raja Babu v. Gauri Lal</i>, 1928 P 535.</p> <p>29. <i>Amir Nawab v. Mst. Najeda Begam</i>, 1927 P 289—6 P 420.</p> <p>30. <i>K. Roy v. K. K. Sen</i>, 1922 C 247.</p> <p>31. <i>Baroda Debya v. Srimati Phutumani</i> 1933 P 276 (?).</p> |
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Valuation of appeal.—Valuation of suit for purposes of appeal is the valuation in the plaint as amended by order of trial court if any ^{31a}. The decision of the trial court as to valuation for the purposes of jurisdiction must be taken as final and conclusive during all stages of the suit and must determine the right of appeal, in spite of parties agreement later on ³².

Appeal involving complaint.—In cases where the hearing of an appeal involves the further question of filing a complaint, the Additional District Judge is not competent to hear it ³³.

Honorary Munsif—Appeal.—Appeal from Honorary Munsif lies to Sub.Judge, even though the case may have been transferred to the Munsif from a Court of Small Causes ³⁴.

West Bengal Premises Rent Control Act—Appeal.—In view of the provisions of Schedule B of the West Bengal Premises Rent Control Act, the Code of Civil Procedure is fully applicable to the trial of suits for ejectment and to appeal from the decrees made therein, and therefore a second appeal would lie under Section 100 of the Code and no application in revision would be maintainable ^{32a}. An order passed in execution of the order under the Act determining a question falling under Section 47 of the Code of Civil Procedure is also a decree and appealable ^{32b}.

CHAPTER IV SPECIAL JURISDICTION

22. Power to transfer to Civil Judges appeal from Munsifs —
(1) A District Judge may transfer to any [Civil] Judge under his administrative control any appeals pending before him from the decrees or orders of Munsifs.

(2) The District Judge may withdraw any appeal so transferred, and either hear and dispose of it himself or transfer it to a Court under his administrative control competent to dispose of it.

(3) Appeals transferred under this section shall be disposed of subject to the rules applicable to like appeals when disposed of by the District Judge.

Legislative changes.—See under Section 3.

Power of Transfer—Restriction.—A District Judge is not competent to transfer an appeal against an order passed under Section 476, Criminal Procedure Code ³⁵. When once a District Judge has withdrawn a suit to his own file he is not competent to re-transfer it ³⁶.

23. Exercise by Civil Judge or Munsif of jurisdiction of District Court in certain proceedings. (1) High Court may, by general or special order, authorize any [Civil] Judge or Munsif to take cognizance of, or any District Judge to transfer to a [Civil] Judge or Munsif under his administrative control, any of the proceedings next hereinafter mentioned or any class of those proceedings specified in the order.

(2) The proceedings referred to in sub-section (1) are the following, namely :—

31a. *H. D. Choudhri v. R. K. Mukerji*, 1923 C 405.

32. *P. N. Roy v. S. C. Roy*, 1942 C 60.

32a. *Smt. Mirabala Dasi v. Binapani Dasi*, 1954C 163.

32b. *Dalhousie Traders Ltd. v. Mohammad Sadique*, 1954C 220.

33. *Inder Deo Ojha v. Emperor*, 1945 P 322; See also *C. K. Home v.*

Gopi Nath Ker, 1938 C 463.

34. *Megi Mal v. Hira Lal*, 1921 A 761.

35. *Shiva Prasad v. Pahlad Singh*, 1935 A 696, dissenting from *Karimullah v. Kameshwar Prahad*, 51 A 344. See also 1938 C 463 for the contrary view.

36. *Ram Charitar Roy v. Bidhata Ray*, 10 CWN 902.

- (a) proceedings under Bengal Regulation V, 1799, (*to limit the Interference of the Zilla and City Courts of Dewanny Adawlut in the Execution of Wills and Administration to the Estates of persons dying intestate*) :
- (b) * * *
- (c) * * *
- (d) proceedings under the Indian Succession Act, 1865, and the Probate and Administration Act, 1881, which cannot be disposed of by District Delegates ; and
- (e) references by Collectors under Section 322C of the Code of Civil Procedure.

(3) The District Judge may withdraw any such proceedings taken cognizance of by, or transferred to, a [Civil] Judge or Munsif, and may either himself dispose of them or transfer them to a Court under his administrative control competent to dispose of them.

Legislative changes.—Clause (b) was repealed by Section 2 and Schedule of Act VIII of 1890 and clause (c) by Act VII of 1889. See also under Section 3. For orders of High Court see L. R. O.

Note.—Sections 23, 24 and 25 do not apply to Honorary Munsifs and Benches. See U. P. Honorary Munsifs Act, 1896 (U. P. Act II of 1896), Section 13, Vol. II.

Scope.—Sections 23, 24 and 25 have no application to Honorary Munsifs and Benches in view of Section 13 of Honorary Munsifs Act, 1896. The rules referred to in this section include rules relating to appeals and therefore appeal lies to High Court 37.

24. Disposal of proceedings referred to in last foregoing Section.—(1) Proceedings taken cognizance of by, or transferred to a [Civil] Judge or Munsif, as the case may be, under the last foregoing section shall be disposed of by him subject to the rules applicable to like proceedings when disposed of by the District Judge:

Provided that an appeal from an order of the Munsif in any such proceedings shall lie to the District Judge.

(2) An appeal from the order of the District Judge on the appeal from the order of the Munsif under this section shall lie to the High Court if a further appeal from the order of the District Judge is allowed by the law for the time being in force.

Legislative changes.—See under Section 3 and also note under Section 23.

25. Power to invest Civil Judges and Munsifs with Small Cause Court jurisdiction.—The [State Government] may, by notification in the Official Gazette, confer, within such local limits as it thinks fit, upon any [Civil] Judge or Munsif the jurisdiction of a Judge of a Court of Small Causes under the Provincial Small Cause Courts Act, 1887, for the trial of suits, cognizable by such Courts, up to such value not exceeding five hundred rupees in the case of a [Civil] Judge or [two hundred and fifty rupees] in the case of a Munsif as it thinks fit, and may withdraw any jurisdiction so conferred :

[Provided that the [State Government] may, by notification in the [Official Gazette], delegate to the High Court its powers under this section].

Legislative changes.—The words [two hundred and fifty rupees] were substituted for the words ‘one hundred rupees’ by Section 4 of Act XVI of 1911. The proviso to this section added by Section 2 and Pt. I of Sch. to Act IV of 1914. **For delegation**—See note under Section 19. See also under Section 3 and note under Section 23.

CHAPTER V

[**MISFEASANCE—SECTIONS 26 TO 29**]

Repealed by the A. O. 1937

CHAPTER VI

[**MINISTERIAL OFFICERS—SECTIONS 30 TO 35**]

Repealed by the A. O. 1937

CHAPTER VII

SUPPLEMENTAL PROVISIONS

36. Power to confer powers of Civil Courts on officers.—(1) The [State Government] may invest with the powers of any Civil Court under this Act, by name or in virtue of office,—

- (a) any officer in the Chutia Nagpur, [Sambalpur] Jalpaiguri or Darjeeling District, or in any part of the territories administered by the Chief Commissioner of Assam except the District of Sylhet, or,
- (b) after consultation with the High Court, any officer serving in any other part of the territories which this Act extends and belonging to a class defined in this behalf by the [State Government] * * * * *.

(2) Nothing in [Sections 4, 5, 6, 8, 10 or 11] applies to any officer so invested, but all the other provisions of this Act shall, so far as those provisions can be made applicable, apply to him as if he were a Judge of the Court with the powers of which he is invested.

(3) Where, in the territories mentioned in clause (a) of sub-section (1), the same local jurisdiction is assigned to two or more officers invested with the powers of a Munsif, the officer invested with the powers of a District Judge may, with the previous sanction of the [State Government], delegate his functions under sub-section (2) of Section 13 to an officer invested with the powers of a [Civil] Judge or to one of the officers invested with the powers of a Munsif.

(4) Where the place at which the Court of an officer invested with powers under sub-section (1) is to be held has not been fixed under Section 14, the Court may be held at any place within the local limits of its jurisdiction.

Legislative changes.—The words [State] was substituted for the words ‘territories administered by the Chief Commissioner’ by A. O. 1950 and the words [Sections 4, 5, 6, 8, 10 or 11] for the words “Sections 4 to 8 (both inclusive) or Sections 10 to 12 (both inclusive) or Sections 27 to 35 (both inclusive)” were substituted by A. O. 1937. The words “with the previous sanction of G.-G.-in-C.” were omitted by Act XXVIII of 1920, Section 2 and Schedule I, Pt. I. See also under Section 3.

Officer—Meaning.—An ‘officer’ means and includes an officer with judicial powers ³⁸.

38. *Halder Mahoto and another v. Kali Prasad Ghose*, 2 C W N 127.

87. Certain decisions to be according to personal law.—(1) Where in any suit or other proceeding it is necessary for a Civil Court to decide any question regarding succession, inheritance, marriage or caste, or any religious usage or institution, the Muhammadan law in cases, where the parties are Muhammadans and the Hindu law in cases where the parties are Hindus, shall form the rule of decision except in so far as such law has, by legislative enactment, been altered or abolished.

(2) In cases not provided for by sub-section (1) or by any other law for the time being in force, the Court shall act according to justice, equity and good conscience.

Legislative changes.—The provisions of this section in so far as they are inconsistent with the provisions of the Muslim Personal Law (Shariat) Application Act, 1937, have been repealed by Section 6 of that Act.

Scope.—Section 37 says that neither Hindus nor Muhammadans, against their will should be subjected to the law of the other or the English or any other law. It allows a man to adopt for himself any special custom which he pleases³⁹. They are thus entitled to adduce special evidence relating to a family custom that female descendants could not inherit in the presence of males⁴⁰. The Act is not repugnant to Bengal Regulation, 111 of 1872 and therefore in the matters of interest the Courts cannot invoke the aid of justice, equity and good conscience⁴¹. The terms of this section merely repeat those of Section 24 of Act VI of 1871 which in turn reproduce those of Section 15 of Bengal Regulation IV of 1793⁴², to which the Company's courts had always given a wide interpretation. What is meant by Section 37 (2) is that where the statute law deals with a subject and allows certain rights, equity cannot be invoked to extend the rights⁴³. But if there is no statute law on the subject, justice, equity and good conscience would come in⁴⁴. e. g. proceedings for enhancement of rent by a landlord against his tenant, who has sub-let his holding⁴⁵.

Jats, if Hindus.—Jats are governed by Hindu law in the absence of a special custom. They are treated as Hindus for the purposes of this Section⁴⁶.

Personal Law—Extent of Application.—In Section 37 the words "Succession, inheritance, marriage or caste, or any religious usage or institution" have been used, and the topics of divorce, dower, betrothal, family relations are not particularised as in the enactments of other States. This does not import an intention that the social and family life should be differently regarded from State to State and are not to be governed in such matters by their own personal law⁴⁷. Where a gift is made by a Muhammadan to a Hindu, rules of Muhammadan Law should be applied⁴⁸. For principles governing the applicability of Hindu or Muhammadan Law see the cases at the footnote⁴⁹.

38. Judges not to try suits in which they are interested.—(1) The presiding officer of a Civil Court shall not try any suit or other proceeding to which he is a party or in which he is personally interested.

(2) The presiding officer of an appellate Civil Court under this Act shall not try an appeal against a decree or order passed by himself in another capacity.

- 39. *Raja v. Allahdiya*, 33 IC 114 (A).
- 40. *Mohd. Ismail Khan v. Sheomukh Rai* 18 IC 571 (P. C.)
- 41. *Debi Prasad Dhrum Dhuni v. Kusam Kumari and another*, 1939 P 442—10 P 63.
- 42. *Sabir Husain v. Farzand Husain*, 1938 PC 80—1938 OWN 233—65 IA 119 reversing 1934 A 52.
- 43. *Shri Beharji Maharaj v. Manmohan Das*, 1939 A 41.
- 44. *Hem Man Singh v. Anmol Singh*, 1924 A 699; See also *Natha and*

- another v. Govind Ram*, 1921 A 28; *Md. Rasa Khan v. Mosasan Khan*, 46 A 470.
- 45. *Prasanna Deb Itakat v. Taijina Khatun*, 1946 PC 46—73 IA 18.
- 46. *Mst. Bhagwani v. Khushi Ram*, 24 IC 982 (A).
- 47. *Sabir Husain v. Farzand Husain*, 1938 PC 80—65 IA 119.
- 48. *Mt. Tabera v. Ajodhia Prasad* 1929 P 417.
- 49. 8 MIA 400; 9 MIA 135; 2 A 625; 43 A 343; 7 A 297; 11 AWN 65.

(3) When any such suit, proceeding or appeal as is referred to in sub-section (1) or sub-section (2) comes before any such officer, the officer shall forthwith transmit the record of the case to the Court to which he is immediately subordinate, with a report of the circumstances attending the reference.

(4) The superior Court shall thereupon dispose of the case under section 25 of the Code of Civil Procedure.

(5) Nothing in this section shall be deemed to affect the extraordinary original civil jurisdiction of the High Court.

Section 38(2)—The prohibition contained in this section is to the hearing of an appeal against a decree or order passed by himself, but where no decree or order is passed, the appeal can be heard e. g. a Munsif has charge of a case upto framing of issues and later becomes a Civil Judge, he is not disqualified from hearing the appeal in that case ⁵⁰.

39. Subordination of Courts to District Court.—For the purposes of the last foregoing section the presiding officer of a Court subject to the administrative control of the District Judge shall be deemed to be immediately subordinate to the Court of the District Judge, and, for the purposes of the Code of Civil Procedure, the Court of such an officer shall be deemed to be of a grade inferior to that of the Court of the District Judge.

40. Application of Act to Provincial Courts of Small Causes.—(1) This section and Sections 15, 32, 37, 38 and 39 apply to Courts of Small Causes constituted under the Provincial Small Cause Courts Act, 1887.

(2) Save as provided by that Act, the other sections of this Act do not apply to those Courts.

THE BENGAL INDIGO CONTRACTS ACT, 1836

(ACT NO. X OF 1836)

CONTENTS

Sections

1. [Repealed.]
2. Security to be given by person desiring to remove indigo-plant ordered to be delivered to him.
3. Right of suit of person making advances for cultivation or delivery of indigo-plant when breach of contract is induced by third person.

Sections

- Bar of suit for act done to recover debt & secure performance of lawful contract.
- Power to examine both plaintiff and defendant in suit, and to award compensation to successful defendant.
- 5 [Repealed].

[PASSED BY THE GOVERNOR-GENERAL-IN-COUNCIL ON THE
11TH APRIL, 1836]

1. [Repeal of clause 3 of Section 5 of Bengal Regulation VI of 1823.]
Rep. by Act XIV of 1870.

Note:—Short title given by S. 2 and Sch. I of Act I of 1903. The Act was declared by the Laws Local Extent Act, 1874 (Act XV of 1874), S. 7 and Sch. V U. C. A., Vol. II, p. 250, to be in force in the whole of the Province of Agra (then the North-Western Provinces), except as regards the Scheduled Districts. It has been declared, by not. under the Scheduled Districts Act, 1874 (Act XIV of 1874), to be in force in the Scheduled portion of the Mirzapur District and in Jaunpur-Bawar—see nots. nos. 631 and 633, d. May 30, 1879, in Gaz., 1879, pp. 774 and 775, respectively.

50. *Kamta Singh v. Bhagwan Das and others*, 1928 A 96. See also 38 M 536.

This Act has been extended to the areas mentioned in column 1 of this table under the Act or Order mentioned in column 2 and enforced in such areas under notification, if any, mentioned in column 3 with effect from the date mentioned in column 4 against each such area.

Areas	Act or Order under which extended	Notification, if any, under which enforced	Date from which enforced
1	2	3	4
1. Rampur district	Rampur (Application of Laws) Act, 1950.	...:	Dec. 30, 1949.
2. Banaras district	Banaras (Application of Laws) Order, 1949.	No. 3261(1)/XVII-Merge, d. Nov. 30, 1949.	Nov. 30, 1949.
3. Tehri-Garhwal district	Tehri-Garhwal (Application of Laws) Order, 1949.	No. 3262(2)/XVII-Merge, d. Nov. 30, 1949.	Bitto.

2. Security to be given by person desiring to remove indigo-plant ordered to be delivered to him. * * *¹ Whenever the right to indigo-plant may be contested, and an order shall be passed, under the provisions of clause ninth, Section 3, Regulation VI, 1823², of the Bengal Code, for the delivery of indigo-plant to one of the parties claiming the same, such party shall not be allowed to cut or remove the indigo-plant until he shall have given sufficient security to the satisfaction of the Court trying the case to make good any claim that shall be ultimately established to such indigo-plant, whether arising from a prior right to the produce of the land, or from an arrear of rent due on account of the specific parcel of land from which the plant may have been produced.

3. Right of suit of person making advances for cultivation or delivery or indigo-plant when, breach of contract is induced by third person.—* * *¹ When a lawful contract shall have been made between a raiyat and another party, by which contract the raiyat shall have bound himself to cultivate indigo-plant for the other party, or to deliver indigo-plant to the other party, and when the other party shall have advanced money to the raiyat for the purpose of enabling the raiyat to fulfil such contract, then if any other person, knowing that such contract exists, and that such advance has been made, shall prevail upon the raiyat to break such contract, the party who made the advance shall be entitled to proceed by civil action against the person who shall have so prevailed on the raiyat, as well as against the raiyat, and to recover from him or them, jointly or severally, damages to the extent of the injury sustained, together with costs of suit :

Bar of suit for act done to recover debt or secure performance of lawful contract.—Provided always that nothing in this section contained shall be construed to give a right of action against any person in consequence of any act which that person may have done for the purpose of procuring payment of a debt, or performance of a lawful contract.

4. Power to examine both plaintiff and defendant in suit, and to award compensation to successful defendant. —* * *¹ The Court

1. The words [and it is hereby enacted that] rep. by Act XVI of 1874.
2. Supra.

trying any suit instituted under the provisions of Regulation VI, 1823², of the Bengal Code, or under the provisions of this Act, shall be authorized to examine both the plaintiff and the defendant whenever the Court shall deem such examination necessary to the ends of justice; and, if the award be in favour of the defendant, to assign to the defendant, a sum which may be a compensation to him for the expense and loss of time occasioned by the proceeding.

5. [Power to refer certain suits to a Principal Sadr Amin or Sadr Amin].
Rep. by Act VIII of 1868.

THE BENGAL RUGULATION REPEALING ACT, 1938

(U. P. Act No. XII of 1938).

CONTENTS

Sections

- 1. Short title and extent.
- 2. The Bengal Troops, Transport and

Sections

- Travellers' Assistance Regulation.
- 1806, Repeal of Section VIII,

[PASSED BY THE LEGISLATURE OF (UTTAR PRADESH)]

Received the assent of the Governor of the [Uttar Pradesh] on September 23, 1938, and was published under Section 75 of the Governor's of India Act, 1935, on October 1, 1938).

Whereas it is expedient to repeal Section VIII of the Bengal Regulation XI of 1806;

It is hereby enacted as follows:—

Prefatory Note.—The following extracts from the Statement of Objects and Reasons may be usefully noticed:—

"In 1930 the International Labour Conference adopted a convention of which Article 1 required each Covenanting State to suppress the use of forced or compulsory labour. Article 4 of that Convention prohibits compulsory labour for the benefit of private individuals or associations. The Government of India although unable to ratify the Convention, adopted certain resolutions passed by the Central Legislature on the Convention and asked [State] Governments to take action accordingly. It is, therefore, proposed to repeal the said section [Section VIII of Bengal Regulation XI, 1806], completely".

For Proceedings in Assembly—See Assembly Proceedings Vol. VII in 132.

1. Short title and extent.—The Act may be called the Bengal Regulation Repealing Act, 1938. It extends to the whole of the [Uttar Pradesh].

2. The Bengal Troops, Transport and Travellers' Assistance Regulation, 1806, Repeal of Section VIII—Section VIII of the Bengal Regulation XI of 1806, as amended by Section II of the Bengal Regulation III of 1920, is hereby repealed.

APPENDIX A

Section VIII of Bengal Regulation XI of 1806

VIII. Whenever any military officer, not commanding nor proceeding with a corps or detachment of troops, or any other person (whether European or native), not restricted by Government from passing through the country, may be proceeding within any

Police officers are empowered, in cases of necessity to assist travellers in prosecuting their route.

2. Supra.

In what manner such assistance shall be afforded,

Persons and carts and bullocks of certain descriptions, not to be employed in furnishing such assistance. Penalty for a breach of the above rule.

Person employed under this section, to be at liberty to return from the first police station in the next zillah, unless they may have engaged to the contrary.

part of the Company's provinces, either on the public service or on his private affairs, and shall be in need of assistance during his route, to enable him to prosecute his journey, he shall be at liberty to apply to the nearest local officer of police, to aid him in providing any requisite bearers, *coolies*, boatmen, carts, or bullocks, or any necessary supplies of provisions or other articles. On receiving an application of the above nature the police officer to whom it may be made shall furnish the aid required, or cause it to be furnished by the proper person or persons; provided that a sufficient number of persons who have been accustomed to act as bearers, *coolies*, or boatmen, or the requisite number of carts and bullocks, not exclusively appropriated to the purposes of agriculture and occasionally let for hire, can be procured within his jurisdiction. But all police officers are strictly forbidden, under pain of dimission from office (under the rules prescribed by Regulation V of 1804), on applications of the above nature, to compel any persons not accustomed to act as bearers, *coolies*, or boatmen, to serve on such occasions, or to furnish a traveller, or cause him to be furnished, with bullocks or carts kept for private use and not for hire, or exclusively appropriated to the purposes of agriculture. Persons so employed, and the persons incharge of carts and bullocks so provided, shall be at liberty to return from the first police station in the next zillah through which the corps or detachment is to march, unless a voluntary engagement to the contrary may be entered into by such persons. The police officers are further enjoined to be careful that a proper compensation for the bearers, *coolies*, boatmen, carts or bullocks employed, and a just price for the provisions or other articles provided, be secured to the persons entitled thereto. For this purpose, the police officers are authorized to adjust the rate of hire to be paid for the bearers, *coolies*, boatmen, carts, or bullocks required, and the price of any articles provided; as well as to demand that the whole, or a part, according to the circumstances of the case, be paid in advance.

On what conditions assistance will be afforded to travellers.

Should any traveller refuse to comply with the adjustment or demand so made by a police officer, he will not be entitled to any assistance from the officers of Government under this Regulation.

APPENDIX B

Bengal Regulation III of 1820

A Regulation for rescinding some of the provision of Regulation XI, 1806, and for preventing the practice of Pressing Collies or Begarees: Passed by the Governor-General-in-Council, on the 24th March, 1820.

1. **Preamble.**—Whereas the authority vested by Regulation XI, 1806, in the collectors and their native officers, and in the magistrates

and their police officers to assist in procuring coolies for the purposes of facilitating the march of detachments of troops, or the progress of individual travellers, has operated to encourage the highly injurious practice which prevails, of forcible pressing certain classes of the inhabitants of the towns and villages, under the denomination of begarees or *coolies*, for the purpose of carrying baggage or other loads from stage or from village to village; and whereas the Governor-General-in-Council has deemed it expedient to adopt measures for the entire supersession of the said highly objectionable practice, the following rules have been enacted to have effect throughout the whole of the territories immediately subordinate to the presidency of Fort William, from the date of their promulgation.

II. Part of the provisions, of Regulation XI, 1806, rescinded.— Such part of the provisions of Regulation XI, 1806, as authorizes the collectors and their native officers, or the magistrates and their police officers to give their official aid in procuring *coolies* for the purpose of facilitating the march of troops, or the progress of civil and military officers, or other travelling through the country, either on the public service or on their private affairs, is hereby rescinded.

III. The practice of pressing begarees prohibited ; and the magistrates enjoined to put a stop to the practice by all legal means in their power.— The practice of pressing or compelling individuals, whether under the denomination of *coolies*, begarees, or any other denomination to carry burthens, either for the public service or for the convenience of private individuals, is hereby positively prohibited ; and the several magistrates and joint magistrates are required to adopt all legal means in their power to put an entire stop to the practice in question, by inquiring fully into all complaints which may be brought before them, and by subjecting persons regularly convicted of the offence, to such penalties as on a consideration of the case may appear to be proper, and consistent with the powers vested in the magistrates by the general Regulations.

UTTAR PRADESH BHOO DAN YAGNA ACT, 1952

(U. P. Act No. X of 1953)

CONTENTS

Sections

1. Short title, extent and commencement.
2. Definitions.
3. Establishment and incorporation of the Bhoo Dan Yagna Committee.
4. Constitution of the Committee.
5. Dissolution of the Committee.
6. Casual vacancies and other matters about the Committee.
7. Duties of the Committee.
8. Donation of land to Bhoo Dan Yagna.
9. Publication of and investigation

Sections

- upon the declaration.
10. Donor competent to donate land.
11. Filing, hearing and disposal of objections.
12. Lands which cannot be donated.
13. Lands donated prior to the commencement of this Act.
14. Grant of land to landless persons.
15. Grants to be made in accordance with Bhoo Dan Yagna Scheme.
16. Exemption from stamp duty and registration.
17. Power to make rules.

AUTHORITATIVE ENGLISH TEXT OF THE UTTAR PRADESH BHOO DAN YAGNA ADHINIYAM, 1952

An Act to facilitate donation and settlement of lands in connection with the Bhoodan Yagna initiated by Sri Acharya Vinoba Bhave.

Whereas it is expedient to facilitate the donation of lands in connection with the Bhoodan Yagna initiated by Sri Vinoba Bhave and to provide for the settling of such lands on the landless persons;

It is hereby enacted as follows—

Prefatory Note:—Statement of Objects and Reasons of Bhoodan Yagna Act:—

"In the last cold weather Acharya Vinoba Bhave started the Bhoodan Yagna Movement with a view to obtain land so that it could be distributed among the landless persons of the State. The response of the people of the State was very encouraging. The Zamindars as well as tenants donated their land to Acharya Ji. There were, however, certain legal difficulties. The donations made by the Zamindars were defective according to the provisions of Section 23 of U. P. Zamindari Abolition and Land Reforms Act, 1950. The tenants did not possess any rights to transfer their lands by gift. This Bill is intended to remove these and certain other legal difficulties and to ensure the achievement of the object of this movement, both in regard to the donations of land to the Bhoodan Yagna and its distribution to the landless persons." *vide U. P. Gazette Extra ordinary dated November 21, 1952.*

1. Short title, extent and commencement.—(1) This Act may be called the U. P. Bhoodan Yagna Act, 1952.

(2) It extends to the whole of the Uttar Pradesh.

(3) It shall come into force at once.

Note:—Act was passed in Hindi by the Uttar Pradesh Legislative Assembly on December 24, 1952, and by the Uttar Pradesh Legislative Council on January 5, 1953.

Received the assent of the President on February 27, 1953, under Article 20¹ of the Constitution of India and was published in the *Uttar Pradesh Gazette (Extraordinary)*, dated March 5, 1953.

2. Definitions.—In this Act unless there is anything repugnant in the subject or context—

(a) "Bhoodan Yagna" means the movement initiated by Sri Acharya Vinoba Bhave for acquisition of land through voluntary gifts with a view to distribute it to landless persons;

(b) "holding" shall have the meaning assigned to it in the U. P. Tenancy Act, 1939;

(c) "owner" means as respects any land—

(i) in areas where the rights of intermediaries have vested in the State Government under Section 4 of the U. P. Zamindari Abolition and Land Reforms Act, 1950, its *bhumidhar* or *sirdar*, as the case may be;

(ii) in areas where the U. P. Tenancy Act, 1939, is in force for the time being, its landlord and also includes a rent-free grantee, a grantee at a favourable rate of rent, a grove-holder and a tenant mentioned in clauses (a) to (f) of Section 21 of the said Act;

(iii) in other areas, its proprietors and also includes a tenant having a heritable and transferable interest in land;

(d) "prescribed" means prescribed by rules made under this Act;

- (e) "State Government" means the Government of Uttar Pradesh ; and
- (f) "words and expressions" not defined in this Act shall have the meaning assigned to them—
 - (i) in areas referred to in sub-clause (i) of clause (c) in the U. P. Zamindari Abolition and Land Reforms Act, 1950 ;
 - (ii) in areas referred to in sub-clause (ii) of the said clause in the U. P. Tenancy Act, 1939 ;
 - (iii) in other areas, in the law relating to land tenure applicable to the land.

Holding—Meaning.— Holding has been defined by Section 3 (7) of the U. P. Tenancy Act :

"Holding means a parcel or parcels of land held under one lease, engagement or grant or in the absence of such lease, engagements or grant under one tenure and in the case of *Thekadar* includes the *theka* area".

Accretions to the holding if gradual and slow would also form part of the holding¹.

Bhumidhar.—See Section 130 of the U. P. Zamindari Abolition and Land Reforms Act and the comments thereunder.

Sirdar.—See Section 131 of the U. P. Zamindari Abolition and Land Reforms Act and the comments thereunder.

Rent-free grantee.—Section 188 of the U. P. Tenancy Act defines "rent-free grant" ².

"A rent-free grant means a grant of right to hold land rent free by a landlord with or without consideration not being a grant for the purpose of planting a grove :

Provided that in Agra, if made after the seventh day of September, 1926 and in Oudh, if made after the commencement of this Act, such grant shall be made by registered instrument.

Explanation I.—When a sale of land takes place, a reservation in favour of the vendor of a portion of the land sold, to be held rent-free by such vendor is a rent-free grant.

Explanation II.—A grant of land for the performance of service, religious or secular, is a rent-free grant".

Chapter IX of the U. P. Tenancy Act dealt with rent-free grant and divided them into three categories : (1) Those that could not be assessed to rent or revenue as mentioned in sub-sections (1) and (2) of Section 191 ; (2) those that were liable to assessment of revenue and rent, as provided by Section 192 ; and (3) those contemplated by Sections 194 to 196. The right, to hold the land rent-free must be based on a grant, which entitles the holder to hold it without payment of any rent and the landlord remains liable for the revenue³. The rent-free grantee is not a tenant as defined in section 3 (23) of the U. P. Tenancy Act. The rights and liabilities of a rent-free grantee are given in Sections 190 to 200 of the U. P. Tenancy Act.

Grantee at favourable rate of Rent.—Has been defined by Section 189 of the U. P. Tenancy Act :

"A grant of land at a favourable rate of rent means in Oudh a grant of land at a rent less than the aggregate of the revenue and local rates payable thereon and in Agra a similar grant made after the commencement of this Act" (U. P. Tenancy Act).

Grove-holder.—Has been defined by Section 205 of the U. P. Tenancy Act :

"205. A person who has planted a grove—

(a) on land which was let or granted to him by a landlord for the purpose of planting a grove ;

1. *Murari Lal v. Ram Ruch*, 11 | 3. *Ghulam Sarwar v. Akbar Ali Khan*, 2 R D 137.
R D 215. |
2. *Bachhi v. Bachni*, 3 A L J 513. |

- (b) with the written permission of the landlord, or in accordance with local custom entitling him to do so, on land which he held as a tenant other than as a sub-tenant, a permanent tenure-holder, or a fixed-rate tenant, or a tenant holding on special terms in Oudh or an occupancy tenant in Oudh;

shall be grove-holder of such grove:

Provided that where the permission was granted in Agra before the 7th day of September, 1926, and in Oudh prior to the commencement of this Act, the permission need not have been in writing and may have been either express or implied".

Clauses (a) to (f) of Section 21 of U. P. Tenancy Act.—Are given below for facility of reference:

"21. **Clauses of Tenants.**—There shall be, for the purposes of this Act, the following clauses of Tenants, namely:—

- (a) permanent tenure-holders,
- (b) fixed-rate tenants,
- (c) tenants holding on special terms in Oudh,
- (d) ex-proprietary tenants,
- (e) occupancy tenants,
- (f) hereditary tenants,
- (g) non-occupancy tenants.

3. Establishment and incorporation of the Bhoojan Yagna Committee.—There shall be established a Bhoojan Yagna Committee for Uttar Pradesh (hereinafter called the Committee) having perpetual succession which shall be a body corporate vested with the capacity of suing and being sued in its corporate name, of acquiring, holding, administering and transferring property, both movable and immovable and of entering into contracts.

4. Constitution of the Committee.—(1) The Committee shall consist of the following members, namely—

- (a) the Chairman to be nominated by Sri Acharya Vinoba Bhave;
- (b) four or more but not exceeding nine members to be nominated by Sri Acharya Vinoba Bhave;
- (2) If the Chairman or the member is not nominated before the date or any extended date fixed in that behalf by the State Government, the State Government shall appoint the Chairman or the members, as the case may be, in the place or places so left vacant.
- (3) The nomination or appointment of the Chairman and of the members shall be notified in the *Gazette* in the manner prescribed.
- (4) The Chairman and members of the committee shall hold office for four years from the date of the notification under sub-section (3), and shall be eligible for re-appointment or re-nomination.

5. Dissolution of the Committee.—(1) If at any time the State Government is satisfied that—

- (a) the Committee has failed without reasonable cause or excuse to discharge duties or to perform functions imposed or assigned by or under this Act.
- (b) circumstances have so arisen that the Committee is rendered unable or may be rendered unable to discharge duties or to perform functions imposed or assigned by or under this Act, or

(c) it is otherwise expedient or necessary to dissolve the Committee,

it may by notification in the Official Gazette—

- (i) dissolve the Committee for the period to be specified;
- (ii) direct the reconstitution of the Committee in accordance with the provisions of Section 4 of this Act; and
- (iii) declare that the duties, powers and functions of the Committee under this Act, shall for the period for which it has been dissolved be discharged, exercised and performed by such person or authority and subject to such restrictions as may be specified therein.

(2) The State Government may make such incidental and consequential provisions as may appear to be necessary for this purpose.

6. Casual vacancies and other matters about the Committee.—The method of filling up casual vacancies in the Committee, procedure of its working and the conduct of its business shall be such as may be prescribed.

7. Duties of the Committee.—(1) It shall be the duty of the Committee to administer all lands vested in it for the benefit of the Bhoo dan Yagna.

(2) The Committee shall for the purposes of Bhoo dan Yagna perform such other functions and possess such other powers as may be necessary in respect of such land.

8. Donation of land to Bhoo dan Yagna.—(1) Notwithstanding anything contained in any law for the time being in force, any person, being the owner of land, may donate and grant such land to the "Bhoo dan Yagna" by a declaration in writing in that behalf (hereinafter called the Bhoo dan declaration) in the manner prescribed.

(2) The Bhoo dan declaration shall be filed with the Tahsildar as soon as it is made.

Owner.—See the definition given in Section 2.

9. Publication of and investigation upon the declaration.—Upon receipt of the Bhoo dan declaration the Tahsildar shall—

- (a) publish the same for objections, and
- (b) make a summary enquiry as to the right, title and interest of the donor in such land.

10. Donor competent to donate land.—Notwithstanding anything contained in the U. P. Zamindari Abolition and Land Reforms Act, 1950, U. P. Tenancy Act, 1939, or any other law relating to land-tenure as may be applicable, an owner shall be competent for purposes of this Act to donate the land held by him as such to the Bhoo dan Yagna.

11. Filing, hearing and disposal of objections.—(1) Any person whose interests are affected by the Bhoo dan declaration made under Section 8 may, within thirty days of the publication of the declaration, file objections on the same before the Tahsildar.

(2) The Tahsildar shall register every such objection and shall fix

a date of hearing of which notice shall be given to the declarant, the objector and the Gaon Panchayat concerned.

(3) On the date of hearing or any other date to which it may be postponed, the Tahsildar shall proceed to investigate and dispose of the objection and shall subject to the provisions of Section 12—

- (a) either confirm the Bhoojan declaration, or
- (b) supersede the same.

(4) If the Tahsildar confirms the Bhoojan declaration then, notwithstanding anything contained in any law for the time being in force, all the rights, title and interest of the owner in such land shall stand transferred to and vest in the Bhoojan Committee for purposes of the Bhoojan Yagna :

Provided that no land revenue shall be payable in respect of the land for a period of three years commencing from the first day of July next following the date of confirmation where such land was *hatikadeem* or *banjar* on the date of donation.

(5) Where the Bhoojan declaration is superseded by the Tahsildar under sub-section (3), the donation shall stand cancelled and the owner shall be deemed to continue to have all his rights, interests and title in such land as if no such donation was made.

Scope.—Section 8 provides for the donation of land, while Section 9 lays down that this donation, which will be in the form of a declaration, shall be published by the Tahsildar, to enable the persons interested to file objections. This section deals with the filing, hearing and disposal of objections. In case no objections are filed within thirty days of the publication of the declaration, or if objections are filed and rejected, the Tahsildar shall confirm the declaration with the result that all the right, title and interest of the owner in such land shall stand transferred to and vest in Bhoojan Committee. If the declaration is superseded, the rights and title of the owner would remain intact. See also Section 13.

12. Lands which cannot be donated.—Notwithstanding anything contained in any law an owner shall not, for purposes of this Act, be entitled to donate the land falling in any of the following classes, namely—

- (a) Lands which on the date of donation are recorded or by usage treated as common pasture lands, cremation or burial grounds, tank, path-way or threshing floor ; and
- (b) Land in which the interest of the owner is limited to the life-time.
- (c) Such other land as the State Government may by notification in the *Gazette* specify.

13. Lands donated prior to the commencement of this Act.—

(1) Where any land has been donated to the Bhoojan Yagna prior to the commencement of this Act, the Collector shall prepare a list of all such lands other than lands to which the provisions of Section 12 apply showing therein —

- (a) the area and other particulars of the land ;
- (b) the name and address of the donor ;
- (c) date of donation ;
- (d) the nature of the interest of the donor in the land ;
- (e) if the land has already been granted to any person in pursuance of the Bhoojan Yagna, the name and address of

the person to whom the land has been granted (hereinafter called the grantee) ;

- (f) the date of the grant under sub-clause (e); and
- (g) such other particulars as may be prescribed.

(2) The list so prepared shall be published in the manner prescribed.

(3) Upon the publication of list under sub-section (2) and notwithstanding anything in any law to the contrary -

- (a) the right, title and interest of the donor in such land shall, with effect from the date of donation, be deemed to stand transferred to and vest in the Bhoo dan Yagna Committee as if a Bhoo dan Yagna declaration has been duly made and confirmed in respect thereto under and in accordance with Section 8 and sub-section (3) of Section 11;
- (b) where such land has in pursuance of Bhoo dan Yagna been granted to any person it shall with effect from the date of grant be deemed further to have been granted to the grantee under and in accordance with the provisions of Section 14.

14. Grant of land to landless persons.—The Committee or such other authority or person, as the Committee may, with the approval of the State Government, specify either generally or in respect of any area, may, in the manner prescribed, grant lands which have vested in it to the landless persons, and the grantee of the land shall—

- (i) where the land is situated in any estate which has vested in the State Government under and in accordance with Section 4 of the U. P. Zamindari Abolition and Land Reforms Act, 1950, acquire in such land the rights and the liabilities of a sirdar, and
- (ii) where it is situate in any other area, acquire therein such rights and liabilities and subject to such conditions, restrictions and limitations as may be prescribed and the same shall have effect, any law to the contrary notwithstanding.

15. Grants to be made in accordance with Bhoo dan Yagna Scheme.—All grants shall be made as far as may be in accordance with the scheme of Bhoo dan Yagna.

16. Exemption from stamp duty and registration—The Bhoo dan declaration made or deemed to be made under Section 8 or a grant of land made or deemed to be made under Section 14 shall be and be deemed always to have been exempt from payment of stamp duty and from registration or attestation under law relating to registration and execution of documents, any law to the contrary notwithstanding.

17. Power to make rules.—(1) The State Government may make rules for the purpose of carrying into effect the provisions of this Act.

(2) Without prejudice to the generality of foregoing powers, such rules may provide for

- (a) the matters relating to the establishment, constitution of the Committee, nomination and appointment of Chairman or the members thereto, as the case may be;
- (b) the form of Bhoojan declaration and the manner in which it shall be filed;
- (c) the documents to be filed with the Bhoojan declaration;
- (d) the manner of publication of the Bhoojan declaration;
- (e) the nature, scope and manner of the enquiry under Section 9;
- (f) the manner of filing the objections and their registration;
- (g) the fixation of date for hearing the objections;
- (h) manner and mode of service of notices under this Act;
- (i) procedure to be followed in hearing and disposal of objections under Section 11;
- (j) the procedure relating to confirmation or supersession of declaration;
- (k) the matters relating to the grant of land in pursuance of Section 14; and
- (l) the matters which are to be and may be prescribed.

RULES MADE UNDER THE UTTAR PRADESH BHOOJAN YAGNA ACT, 1952

CONTENTS

Sections

1. Preliminary.
2. Definition.
3. Establishment and incorporation of the Bhoojan Yagna Committee.
4. Constitution of the Committee.
5. Dissolution of the Committee.
6. Procedure on vacancies in appointment of members.
7. Duties of the Committee.
8. Donation of land to Bhoojan Yagna.

Sections

9. Publication of and investigation upon the declaration.
10. Filing, hearing and disposal of objections.
- 11.
- 12.
13. Particulars of the list prepared under Section 13 and the publication thereof.
14. Rights and liabilities of persons to whom land is granted.
15. Appendices.

[Published in U.P. Gazette Extraordinary, dated August 6, 1953 under Notification No. 4936/ 1-A-668-53 of the same date.]

1. Preliminary.—(a) These Rules may be called the Uttar Pradesh Bhoojan Yagna Rules, 1953.

(b) They shall come into force at once.

2. Definition.—In these rules, unless there is anything repugnant in the subject or context,—

- (i) “Act” means the Uttar Pradesh Bhoojan Yagna Act, (Act No. X of 1953).
- (ii) “Committee” means the Bhoojan Yagna Committee for Uttar Pradesh, established, under Section 3 of the Act, and includes the Committee re-constituted under Section 5 (1) (ii) of the Act.
- (iii) “Section” means a section of the Act.

3. Establishment and incorporation of Bhoodan Yagna Committee. After the grant of land has been made by the Committee to a grantee, the grantee as also the land which is subject of the grant, shall, subject to the provisions of the Act, be governed by the prevailing laws relating to land tenure.

4. Constitution of the Committee.—(1) The Chairman and the members of the Committee shall be nominated by Sri Acharya Vinoba Bhave, as provided in clauses (a) and (b) of sub-section (1) of Section 4 of the Act, within a period of thirty days from the date of the publication of the Rules or within such period as may be extended by Government not exceeding a further period of thirty days.

(2) To facilitate the Bhoodan Yagna movement, there shall be a Convener or Secretary in the Committee who shall also be nominated as such by Sri Acharya Vinoba Bhave from amongst the members of the Committee. The Convener or Secretary so appointed shall also record the proceedings.

(3) On the failure of Sri Acharya Vinoba Bhave to make the nominations prescribed in sub-clauses (1) and (2) above within the period stipulated therein, the Chairman, the Convener or Secretary and the Member or Members not so nominated shall be nominated by the State Government, in accordance with sub-clause (2) of Section 4 of the Act.

(4) The names of the persons appointed or nominated as Chairman, as Convener or Secretary and as Members shall be published in the Uttar Pradesh *Gazette*, in the form given below :

(a)

Name of the Chairman with
parentage or full address.

Permanent place of
residence.

(b)

Name of the member with
parentage or full address

Permanent place of
residence.

(5) **Sub-Committee.**—The Chairman shall, in consultation with the Committee, appoint for each district a Convener and a Sub-Committee consisting of not more than ten members to carry on the Bhoodan work in the district.

5. Dissolution of the Committee. (1) The State Government on being satisfied that all or any one or more than one of the conditions specified in clauses (a), (b) and (c) of sub-section (1) of Section 5 exists, shall issue a notification in the *U. P. Gazette* specifying the date from which and the period for which the Committee shall stand dissolved.

(2) On the dissolution of the Committee by the Government in accordance with sub rule (1) above, Sri Acharya Vinoba Bhave shall nominate the Chairman, the Convener or Secretary and Members within a period of thirty days from the date of the notification referred to in sub-clause (1) above, on failure of which the State Government itself would nominate the Chairman, the Convener or Secretary and Members. The names of the Chairman, the Convener or Secretary and the Members so nominated either by Sri Acharya Vinoba Bhave or by the State Government shall be published in the *State Gazette* in accordance with sub-rule 3 of Rule 4 above.

(3) Ad hoc State Committee. The State Government shall appoint a Committee consisting of not more than three persons to discharge the functions and powers of the Committee during the period between the dissolution of the Committee and its reconstitution. The said Committee for the interim period shall be designated "ad hoc State Committee", which shall not function for more than two months from the date of its constitution.

6. Procedure on vacancies in appointment of Members.—(1) On the death or resignation of a Member, his place shall be filled in by the person or authority who nominated him. The period of appointment of the person so nominated shall be for the unexpired term of the member whose place is taken by him.

(2) Casual vacancies in the Committee shall be filled in by the person or authority who appointed the member. The period of appointment of the member in a casual vacancy shall be for the unexpired term of the member in whose place the casual vacancy is filled up.

7. Duties of the Committee.—(1) The Committee shall perform and exercise all or any of the functions and powers conferred on it by the Act, or by the Rules made thereunder, either by itself or through a sub-committee appointed under sub-rule (5) of rule 4 for the district for which the said sub-committee has been constituted, or through such other authority or person nominated by it with the approval of the State Government for any particular area :

Provided that the power so delegated by the Committee to a sub-committee or to a person or authority mentioned in sub-rule (1) above, may, at any time, be revoked.

(2) The Committee shall ordinarily meet once every month for the transaction of its business at such place as may be fixed by it. Ten days' notice shall be necessary for holding the meeting.

(3) The quorum for each meeting shall be three including the Chairman :

Provided that if the quorum is wanting at any meeting it shall be adjourned to such other date as may be fixed by the Chairman to which the agenda of the adjourned meeting shall be carried over and for which the rule of quorum shall have no application.

(4) The Chairman, or, in his absence, any member of the Committee chosen for that purpose for that meeting by the members present, shall preside over the meeting of the Committee.

(5) The Chairman or the Convener or the Secretary of the Committee may invite at any meeting of the Committee any person whose presence is considered necessary or desirable.

(6) In case of disagreement the case shall be referred to Sri Acharya Vinoba Bhave for his guidance.

8. Donation of land to Bhoojan Yagna.—(1) The Bhoojan Yagna declaration shall be in the form given in Appendix I.

(2) The declaration shall be accompanied by an extract from the current year's *Khatauni* duly certified by the *lekhpal* of the 'halqa' in which the land sought to be distributed lies. If the *Khatauni* be not available, an extract from the *Khatauni* for the year immediately preceding shall be filed.

(3) All donations of land made under the Act shall be entered in a register as shown in Appendix II by the Committee or its nominee, which shall be maintained district-wise with sub-headings for each tahsil and copy thereof shall also be sent to the Tahsildar, who shall maintain a similar register for his tahsil.

(4) The Bhooadan declaration shall be filed in the Court of the Tahsildar in whose tahsil the property is situate. Such declarations shall be filed either by the donor himself or by the Committee on behalf of the donor.

9. Publication of and investigation upon the declaration.—

(1) Upon receipt of the said declaration, the Tahsildar shall register it, in the same manner as a report of succession or transfer of possession under Section 34 of the U. P. Land Revenue Act, is registered, in a register maintained for this purpose in the manner prescribed in sub-rule (2) below.

(2) The Tahsildar shall maintain a register for making the entries provided for by sub-rule (1) above in the form shown in the Appendix II-A. The entries in this register shall be with reference to the following classes of land for which separate sets of pages with sufficient number of blank pages to admit fresh entries, shall be allotted :

- (1) Cultivable land,
- (2) Banjar or parti land,
- (3) Agricultural waste-land, and
- (4) Forest land.

(3) The Tahsildar shall, on receipt of Bhooadan declaration, publish it in the following manner and in the form as in Appendix III.

- (a) A notice containing the particulars shown in the declaration shall be served, free of charge, upon all recorded tenure-holders except the person, who has filed the declaration;
- (b) A copy of the declaration shall be affixed on a conspicuous place in the village in which the land is situate.

(4) The service of the notice shall be effected either by post or by revenue peons, or by both the means according to the discretion of the Tahsildar.

(5) The Tahsildar may record statements on oath and admit documents filed.

10. Filing, hearing and disposal of objections.—(1) In making the summary inquiry provided for under Section 11, the Tahsildar shall ascertain whether,—

- (a) the donor filing the declaration has *prima facie* a right, title or interest in the land specified in the declaration,
- (b) the donor is legally competent to make the donation, and
- (c), the land is vacant :

Provided that in those cases where the land donated is subject to a subordinate tenure or is in the occupation of any other person, it shall be deemed to be vacant, if the subordinate tenure-holder or the person in occupation agrees in writing to the donation of this land and is prepared to vacate it in favour of the grantee or the Committee.

(2) The Tahsildar shall, before hearing the objections filed under Section 11, give notice to the declarant, the objector and the *Gaon Panchayat* concerned free of charge in the form shown in Appendix V in which grants of *parti qadim* and having made such enquiry as he deems fit, record his findings.

(3) The objections under sub-section (1) of Section 11 shall be in writing and follow the law of pleading.

11. The Tahsildar shall maintain a register in the form shown in Appendix V in which grants of *parti qadim* and *banjar* lands granted revenue free for three years shall be entered.

12. The Committee shall maintain a register in the form shown in Appendix VI in which the grants made by it shall be entered.

13. **Particulars of the list prepared under Section 13 and the publication thereof.**—(1) The list mentioned in Section 13 shall, in addition to the particulars stated in that section, contain the following particulars :

(a) The nature of the land showing if it is cultivated, barren, forest, etc.

(b) A certificate that the land does not belong to any of the classes mentioned in Section 12.

(c) The land revenue or rent to which the land was assessed on the date immediately preceding the date of donation.

(2) A copy of the said list shall be posted at the Tahsil Notice Board, another shall be affixed at a conspicuous place in the village in which the land donated is situate.

14. Rights and liabilities of persons to whom land is granted.—

(1) The Bhoojan Yagna Committee shall execute a donation deed which may be in the form as in Appendix VII.

(2) The grantee of land in the areas to which the U. P. Zamindari Abolition and Land Reforms Act, 1950, does not apply shall acquire such rights and liabilities as the Committee may confer under the law. The grantee shall be subject to the following conditions, restrictions and limitations :

(a) the grantee shall pay the rent to the Committee in such instalments and on such dates as the Committee may specify,

(b) the grantee shall not be entitled to sublet or transfer the land, and

(c) the grantee shall not be entitled to use the land for any purpose other than that for which it was granted.

15. Rules in regard to donations of properties other than land shall be prescribed by the Committee itself. Such rules shall be framed, as far as may be, in accordance with the Scheme of the Bhoojan Yagna.

APPENDIX I

[See rule 8 (1)]

Bhoodan Yagna Declaration Form

I _____, son of _____, resident of village _____
 Pargana _____ Tahsil _____ District _____ hereby
 donate the plot/plots of land described below to the Bhoodan Yagna
 initiated by Sri Acharya Vinoba Bhave, with effect from _____
 19_____ :

Name of the village, Pargana, Tahsil and District in which the donated land lies	Class of tenure	Khasra no. of the plot/plots donated	Area of plot/plots donated	Land Revenue of the plot/plots
1	2	3	4	5

Dated

19 . .

Signature of the Donor.

APPENDIX II

[See rule 8(3)]

Form of register of lands donated to the Bhoodan Yagna initiated by Sri Acharya Vinoba Bhave

Serial number	Date of declaration of donation by donor	Name of donor with percentage and residence	Title of the donor over the land donated	Area of land donated	Khasra no. of plot/plots donated	Village and Pargana in which the donated land lies
1	2	3	4	5	6	7

APPENDIX II-A

[See rule 9 (2)]

Register of Bhoodan Declarations filed in the Court of the Tahildar under Section 8 (2) of the Act :

Serial No.	Date of present- ation of the declara- tion	Name and address of the declarant	Village and pargana in which land in respect of which the decla- ration is filed is situate	Whether objection filed under section II (1) of the Act	Date of confirmation supersession	Remarks
1	2	3	4	5	6	7

APPENDIX III

[See rule 9 (3)]

In the Court of the Tahsildar.....Tahsil at.....

To

(Name, description and residence of the recorded tenure-holders except the person who has filed the declaration).

Whereas Sri/Srimati..... son of/daughter of/wife of.....
.....resident of village.....Pargana.....
Tahsil.....District.....has declared that he/she has
donated the plot/plots of land described below to the Bhoodan Yagna,
initiated by Sri Acharya Vinoba Bhave, with effect from.....you
are hereby informed that if you are desirous of filing objections, you
may do so till (date, month and year).

Description of the plot/plots of land

Khasra No./Nos.....
Class of tenure.....
Area in acres or standard bighas.....
Land Revenue.....
Village
Pargana.....
Tahsil.....
District.....
Given under my hand and the seal of the Court this.....
day of 19.....

*Dated..... (Signed).....**Tahsildar.....Tahsil.*Seal of
the Court :

APPENDIX IV

[See rule 10 (2)]

In the Court of the Tahsildar,.....Tahsil at.....

To

(Name, description and residence of the declarant and the objector and address of the *Gaon Panchayat* concerned).

Whereas you have declared that you have donated the plot/plots
.....have filed objections against the donation of the
of land described below to the Bhoodan Yagna you are hereby
plot/plots of land described below to the Bhoodan Yagna informed that (date, month and year.....) has been fixed for hear-
ing objections and evidence, if any, produced in support thereof. You
are, therefore, directed to produce on that day all the documents on
which you intend to rely in support of your case.

Take notice that in default of your appearance on the day aforesaid, the case will be heard and determined in your absence.

Description of plot/plots of land intended to be donated :

Khasra No./Nos.....
 Class of tenure.....
 Area in acres or standard bighas.....
 Land Revenue.....
 Village.....
 Pargana.....
 Tahsil.....
 District.....
 Given under my hand and the seal of the Court this.....
 day of..... 19

Dated..... 19 (Signed)

Tahsildar.....

Seal of
the Court : Tahsil.

APPENDIX V

(See rule 11)

Form of Register of Grants made free of revenue for three years

Village..... Pargana..... Tahsil..... District....

Serial No.	Name of grantee with parentage and residence	Date of grant	Area of land granted	Khasra number of plot/ plots granted	Whether old fallow or Banjar	Date from which revenue becomes payable	Remarks
1	2	3	4	5	6	7	8

APPENDIX VI

(See rule 12)

Form of register of grants by the Bhoodan Yagna Committee

Serial No.	Name of grantee with parentage and residence	Khasra No.	Nos. of Plot granted	Plots Bighas	Area in acres or standard	Land revenue	Village	Pargana	Tahsil	District	Remarks
1	2	3	4	5	6	7	8	9	10	11	

APPENDIX VII

[See rule 14 (1)]

Form of donation deed to be executed by the Bhoojan Yagna Committee

The plot/plots of land described below, donated to the Bhoojan Yagna is/are hereby granted to Sri/Srimati.....son of/daughter of/wife of....,resident of village.....Pargana.....Tahsil.....District.....

Name of village, Class of Pargana, Tahsil, tenure District in which the land lies	Khasra no/nos. of the plots plot/plots	Area of the plot/ plots	Land revenue	Rent of the plot/ plots	Remarks
1	2	3	4	5	6

Witness

Dated.....19.....

Signature of the Convener of the
District Sub-Committee.THE UNITED PROVINCES BOARD OF REVENUE
ACT, 1922

(U. P. Act No. XII of 1922)

CONTENTS

- | | |
|--|---|
| 1. Short title, extent and commencement. | 3. Savings of orders etc. issued by previous authorities. |
| 2. Amendment of certain enactments. | Schedule |

[Received the assent of the Governor on the 24th December, 1922, and of the Governor-General on the 23rd March, 1923, and was published under Section 81 of the Government of India Act on the 31st March, 1923 in Gaz. 1923. Pt. VII, pp. 105-110.]

An Act to transfer to the Local Government or to some other authority certain non-judicial powers now exercisable by the Board of Revenue under certain enactments.

Whereas it is expedient to transfer to the Local Government or to some other authority certain non-judicial powers now exercisable by the Board of Revenue under certain enactments, and whereas the Governor-General has given his previous sanction to the passing of this Act, as required by sub-section (3) of Section 80-A of the Government of India Act;

It is hereby enacted as follows :

Prefatory Note.—For S. O. R., see *Gaz.*, 1922, Pt. VIII, p. 523; for R. S. Com., see *ibid.*, 1922, Pt. VIII, pp. 649—658; for discussion, see L. C. Pro. d. Nov. 1st, 1922, Nov. 8, 1922, and Dec. 15, 1922; in Vol. IX, p. 564, Vol. X, p. 154 and Vol. XI, pp. 196—198, respectively.

For S. O. R. of U. P. Act No. 1 of 1924 see *Gaz.*, 1923, Pt. VIII, p. 648; for discussion, see I. C. Pro., d. Jan. 31, 1924, in Vol. XVI, pp. 166—167; for publication, see *Gaz.*, 1924, Pt. VII, pp. 3—4. The Act came into force on April 1, 1924, see not. 1535/1A—554, d. April 1, 1924, in *Gaz.*, 1924, Pt. I, p. 428.

For publication of the Bill, of U. P. Act No. V of 1924, see *Gaz.*, 1924, Pt. VIII, p. 430; for discussion, see I. C. Pro., d. Sep. 5, 1924, in Vol. XIX, p. 54; for publication, see *Gaz.*, 1924, Pt. VII, pp. 11—12. The Act took effect from the date on which the U. P. Act I of 1924 came into force.

1. Short title, extent and commencement.—(1) This Act may be called the United Provinces Board of Revenue Act, 1922.

(2) It extends to the territories * * *¹ administered by the [State Government]² of [Uttar Pradesh]³.

Note.—This Act has been declared to be in force and extended to Rampur by S. 3 and Sch. of the Rampur (Application of Laws) Act (XII of 1950), w. e. f. Dec. 30, 1949, and to Banaras and Tehri-Garhwal by Banaras and Tehri-Garhwal (Application of Laws) Order, 1949, w. e. f. Nov. 30, 1949.

(3) It shall come into force on such day as the [State Government]² may, by notification in the [Official Gazette]⁴ appoint in this behalf.

Note.—The Act came into force on April 1, 1923, see not. no. 913/I—418, d. March 29, 1923, in *Gazette* 1923, Pt. I, p. 355.

2. Amendment of certain enactments. The enactment specified in the third column of the schedule are hereby amended, or in the case of enactments which extend beyond the limits of [Uttar Pradesh]³ shall be deemed to be amended in their application to [Uttar Pradesh]³, to the extent and in the manner mentioned in the fourth column thereof.

3. Saving of orders, etc. issued by previous authorities.—Any appointment, notification, order, scheme, rule or form made or issued, before the commencement of this Act, by an authority for the making or issuing of which a new authority is substituted by or under this Act, shall, unless inconsistent with this Act, be deemed to have been made or issued by such new authority, unless and until superseded by an appointment, notification, order, scheme, rule or form made or issued by such new authority.

1. The words [for the time being] omit. by the A. O. 1937
2. Subs. by the A. O. 1950 for [Prov. Govt. which had been subs. by the A. O. 1937 for [L. G.]

3. Subs. by the A. O. 1950 for [the United Provinces].
4. Subs. for [Gazette] by the A.O. 1937.

SCHEDULE

(See Section 2)

Year	No.	Short title or subject	Acts of the Governor-General-in-Council	Amendments
1863	XXIII	The Wastelands (Claims) Act, 1863.	Section 23A shall be deemed to be omitted.	*1
1870	VII	The Court Fees Act, 1870.	In Section 232 the words "by the Chief Controlling Revenue Authority and approved", shall be deemed to be omitted.	*
1871	XXIV	The Pensions Act, 1871.	<ol style="list-style-type: none"> 1. In Section 5 the words "the Chief Revenue Authority may, subject to the general control of", shall be deemed to be omitted and after the words "appropriate Government", where they secondly occur the word "may" shall be deemed to be inserted. 2. In Section 8 for the words "Chief Controlling Revenue Authority" the words "[State Government]" shall be deemed to be substituted. 3. In Section 14 for the words "the Chief Controlling Revenue Authority may, with the consent of the Local Government," the words "the appropriate Government may, shall be deemed to be substituted. 	
1883	XIX	The Land Improvement Loans Act, 1883.	Section 12 shall be deemed to be omitted.	
1884	XII	The Agriculturists Loans Act, 1884.	In Section 4 the words "or in a province for which there is a Board of Revenue or Financial Commissioner, such Board or Financial Commissioner, subject to the control of the Local Government", shall be deemed to be omitted.	
1885	V	The Mirzapur Stone Mahal Act, 1885.	<ol style="list-style-type: none"> 1. Sub-section (4) of Section 3 shall be omitted. 2. In sub-section (3) of Section 18 for the word "Board", the words "State Government" shall be substituted. 	*8

1899 II The Indian Stamp Act, 1899.	<p>In clause (a) of sub-section (8)⁷ of Section 2 for the words "territories respectively under the administration of the Lieutenant-Governor of Bihar and Orissa and the North-Western Provinces and the Chief Commissioner of Oudh" the words "territories under the administration of the [State Government]⁴ of Bihar and Orissa" shall be deemed to be substituted.</p>
1917 V The Destruction of Records Act, 1917.	<p>1. In Section 2⁸ sub-section (1), clause (a), the words "the United Provinces and" shall be deemed to be omitted.</p> <p>2. In Section 3, sub-section (2), after clause (a) the following clause shall be deemed to be inserted, namely :</p> <p style="padding-left: 20px;">"(aa) in the case of judicial documents in the possession and custody of revenue courts and officers—the Board of Revenue;"</p> <p>In clause (b) of the said sub-section before the word "documents" the words "non-judicial" shall be deemed to be inserted.</p> <p>In sub-section (3)⁹ of the said section after the word "authority" the words "or by the Board of Revenue" shall be deemed to be inserted.</p>
	<p>¹ Entries relating to the Opium Act, 1857 (Act XIII of 1857) rep. by S. 4 of the Opium (Amendment) Act, 1925 (Act XXVII of 1925).</p> <p>² Section 22 of the Court Fees Act, 1870 (Act VII of 1870) was del. by Sect on 24 of the United Provinces' Court Fees (Amendment) Act, 1938 (U. P. Act XIX of 1938).</p> <p>³ The words "appropriate Government" subs. by the A. O. 1937 for [L. G.] in Section 5 of the Pensions Act, 1871 (Act XXXIII of 1871).</p> <p>⁴ Subs. by the A.O. 1950 for [Prov. Government] which had been subs. by the A.O. 1937 for [L. G.].</p> <p>⁵ According to the A.O. 1937 the words [appropriate Government] subs. for [L.G.] in Section 14 of the Pensions Act, 1871 (Act XXXIII of 1871).</p> <p>⁶ The words "[Tribunal to be constituted under Section 296 (2) of the G. of I, Act 1935] subs. by the A.O. 1937 for [L.G.]</p> <p>⁷ Sub-section (8) of Section 2 of the Indian Stamp Act, 1899 (Act II of 1899) rep. by the A. O. 1937. Also see no. 1572/X—C-161, d. April 6, 1923, in <i>Gazette</i>, 1923, Pt. I, p. 368, appointing U. P. Board of Revenue as the Chief Controlling Revenue Authority for the purposes of the Indian Stamp Act, 1899.</p> <p>⁸ Section 2 of the Destruction of Records Act, 1917 (Act V of 1917), omit. by the A. O. 1937.</p> <p>⁹ Sub-section (3) of Section 3 of the Destruction of Records Act, 1917 (Act V of 1917), subs. by <i>ibid.</i></p>

SCHEDULE—(Contd.)

Year	No.	Short title or subject	Amendments
1901	III	The United Provinces Land Revenue Act, 1901.	<p>UNITED PROVINCES ACTS</p> <p>1. For Section 5 the following section shall be substituted, namely :</p> <p>“5. The control of all non-judicial matters connected with the Land revenue in [Uttar Pradesh]² other than matters connected with settlement is vested in the [State Government];³ and the control of all judicial matters and of all matters connected with settlement under this Act is vested in the Board.”</p> <p>2. In Section 9 for the words [its non-judicial business] the words [business connected with settlement] shall be substituted.</p> <p>3. In Section 12 the words (subject to the control of the Board) shall be omitted.</p> <p>4. In Sections 21, 22⁴, 25, 28, 33, 38, 55, 61, 144, and 177 for the words “Board” wherever it occurs, the words “(State Government);³” shall be substituted.</p> <p>5. In Section 263 the words (the Board under the orders of) shall be omitted.</p> <p>6. In Section 116 for the word “Board” the words “(State Government);³” shall be substituted and after the words “this Act and” the words “the Board shall make rules for determining” shall be inserted.</p> <p>7. In Sections 153 and 160 the words “the Board, or, in the case of a taluk or part of a taluka in Oudh” shall be omitted.</p> <p>8. In Section 159 the words “Board, in the case of a taluka or part of a taluka” shall be omitted.</p> <p>9. In Section 161, sub-section (3), the words “the Board with the sanction of” shall be omitted.</p>

10. For section 191 the following section shall be substituted, namely :

"191. The State Government³ or a Commissioner may transfer any non-judicial case or any class of non-judicial cases not connected with settlement, and the Board or a Commissioner may transfer any judicial or settlement case or any class of such cases, including partition cases, from any subordinate revenue court or revenue officer to any other such court or officer competent to deal therewith".

11. In Section 210, sub-section (1), clause (c) before the word "orders" the words (judicial or settlement) shall be inserted.

After sub-section (3) of the said section, the following sub-section shall be added, namely :

"(4) No appeal shall be allowed from non-judicial order not connected with settlement passed by a Commissioner".

12. In Section 212 before the words "A second appeal" the words (subject to the provisions of Section 210) shall be inserted.

13. In Section 213 before the words "A third appeal" the words (subject to the provisions of Section 210) shall be inserted.

14. In Section 218 after the word "Board" where it first occurs the words 'if the case is of a judicial nature, or connected with settlement, or for the orders of the State Government'² if the case is of a non-judicial nature not connected with settlement shall be inserted, and after the word "Board", where it last occurs the words 'or the (State Government)³ as the case may be' shall be inserted.

In the marginal note before the word "Board" the words "(State Government)³ or" shall be inserted

² Subs. by the A. O. 1950 for (the United Provinces.)

² Subs. by the A. O. 1950 for (Prov. Government) which had been subs. by the A. O. 1937 for (L. G.).

³ Sections 22 & 26 of the U. P. Land Revenue Act, 1901 (U. P. Act III of 1901), omitted by the A. O. 1937.

SCHEDULE—(Contd.)

Year	No.	Short title or subject	Amendments
1901	III	The United Provinces Land Revenue Act, 1901— (Continued).	<p>15. In Section 21¹ for the word "Board" where it first occurs, the words (State Government)² shall be substituted, and after the word "proceeding", the words "not connected with settlement", and after the word "nature", the words "or connected with settlement", shall be inserted, and in the marginal note before the word "Board", the words "(State Government)¹ or", shall be inserted.</p> <p>16. In Section 22⁰ for the words "its non-judicial business" the words "business connected with settlement" shall be substituted.</p> <p>17. For Section 234 the following section shall be substituted, namely :—</p> <p>"234. The (State Government)² may make rules consistent with this Act in respect of matters under clauses (a) to (f), (m) (i), (o) to (s), (v) (i), (w) (i), (x) (i) and (y) and the Board may, from time to time, subject to the sanction of the (State Government)² make rules consistent with this Act in respect of matters under clauses (g) to (l), (m) (i), (n), (q), (w), (v) (i), (x) (i) and (x) (ii) :—</p> <ul style="list-style-type: none"> (i) prescribing the duties of talukdars and naib-talukdars, and regulating their postings and transfers and their appointment in temporary vacancies; (ii) regulating the appointment and transfer of kanungos and patvaris, their salaries, qualifications, duties, removal, punishment, suspension, and dismissal; (iii) regulating the extent to which preference may be given in the appointment of kanungos to persons of families in which the office of kanungo is hereditary; (iv) prescribing the form, contents, method of preparation, attestation, and maintenance of the record-of-rights and other records, maps, field-books, registers and lists made or kept under this Act; (v) regulating the imposition of fines, under Section 38, for failure to notify successions and transfers; (vi) regulating the appointment, duties, and dismissal of lumbardars;

- (g) prescribing the manner in which Settlement Officers shall report proposals of assessment for the mahals of any area;
- (h) regulating the distribution of assessments;
- (i) directing with regard to what matters the Settlement Officer is to ascertain and record the village custom, under Section 84, and what matters are so determined and recorded, under Section 85;
- (j) for the guidance of Collectors and Settlement Officers in fixing rents under this Act;
- (k) regulating the assessment of resumed revenue-free grants or of land gained by alluvion, or the reduction of the assessment or the suspension of revenue a mahal in consequence of fluvial action;
- (l) for the guidance of Collectors in making settlement, under Section 96, and in making remission, suspensions, or reduction of rent, under Section 101;
- (m) (i) regulating the costs of partition, and the instalments and times of payment thereof, under Section 116;
 (ii) determining the mode in which the costs of partitions are to be apportioned, under Section 116;
- (n) regulating the division of complex mahals and the distribution of the revenue thereof, under Section 135;
- (o) regulating the instalments in which, and the persons, places and time to whom and at which the revenue shall be paid;
- (p) providing for the payment of the revenue through lambards and for their remuneration;
- (q) regulating the issue of writs of demand and citations to appear, under Section 147, and the exercise of powers of arrest and detention in custody, under Section 148, and directing by what officers or class of officers such process shall be issued or powers exercised, and fixing the costs to be recovered from defaulters;

SCHEDULE—(Contd.)

Year	No.	Short title or subject	Amendments
1901	III	The United Provinces Land Revenue Act, 1890— <i>(continued).</i>	<p>(r) regulating the method of attachment and sale of movable property, under Section 149;</p> <p>(s) regulating the procedure to be adopted when a share or patti is transferred, the settlement or a patti or mauli is annulled, or any immovable property is attached and sold;</p> <p>(t) regulating the recovery of arrears due to under Section 184;</p> <p>(u) regulating the recovery of rent from under-proprietors, under Section 185;</p> <p>(v) (i) regulating the costs which may be recovered in, or in respect of, any non-judicial proceeding not connected with settlement under this Act;</p> <p>(ii) regulating the costs which may be recovered in, or in respect of, any judicial or settlement proceeding under this Act, other than costs recoverable by the [State Government] in proceedings in partition cases;</p> <p>(vi) (i) regulating the procedure to be followed by any officer (or other person) who under any provision of this Act is required or empowered to take action in any non-judicial matter not connected with settlement;</p> <p>(ii) regulating the procedure to be followed by any officer (or other person) who under any provision of this Act is required or empowered to take action in any judicial or settlement matter;</p> <p>v) (i) generally for the guidance of all persons in all non-judicial proceedings not connected with settlement under this Act, and for carrying out the provisions of this Act in respect of such proceedings;</p> <p>(ii) generally for the guidance of all persons in all judicial or settlement proceedings under this Act, and for carrying out the provisions of this Act in respect of such proceedings; and</p> <p>v) defining the classes of cases, mutters, business, orders of proceedings which are to be deemed judicial or non-judicial respectively;</p>

1914	I	The United Provinces Local Rates Act, 1914.	In sub-section (2) of Section 13 for the words "Board of Revenue" the words "[State Government]" shall be substituted.
1915	V1	The Pargans of Kaigar & Raja Act, 1915.	In Section 15 for the word "Board" the words "[State Government]" shall be substituted.
2 [1920]	IV	The Canning College and British Indian Association Contribution Act.	In Section 7 for the words and commas "The Board of Revenue may, from time to time, subject to the sanction of the [State Government] ¹ , the words and commas "The [State Government] ¹ may, from time to time," shall be substituted.
1799	V	The Bengal Wills and Intestacy Regulation, 1799.	BENGAL REGULATIONS In Section 7 for the words "Board of Revenue" the word "[Commissioner]" shall be deemed to be substituted, and for the words "for its orders" the words "for his or its orders" shall be deemed to be substituted.
1803	XXXIII	The United Provinces Revenue Officers Regulation, 1803.	In Section 3 for the words "the Board of Revenue are", the words "[State Government] ¹ is" shall be deemed to be substituted.
1806	XI	The Bengal Troops Transport and Travellers Assistance Regulation, 1806.	In Sections 5 and 7 for the words "Board of Revenue" the word "[Commissioner]" shall be deemed to be substituted.
1825	VI	The Bengal Troops Transport Regulation, 1825.	In Sections 4 and 5 for the words "Board of Revenue" or "Board" wherever they occur, the word "Commissioner" shall be deemed to be substituted.
1827	V	The Bengal Attached Estates Management Regulation, 1829.	In the proviso to Section 3 for the words "Board of Revenue and" the Board" the word "Commissioner," shall be deemed to be substituted.
1833	IX	The Bengal Land Revenue (Settlement and Deputy Collectors) Regulation, 1833.	In Section 2, the words "the Board of Revenue or" and the words "as the case may be" shall be deemed to be omitted.

1. Subs. by the A. O. 1950 for [Prov. Govt.] which had been subs. by the A. O. 1937 for [L. G.].
2. Ins. by U. P. Act I of 1924, S. 2, as amended by Act V of 1924, S. 2.

U. P. BOARD OF REVENUE (DECLARATION OF PROCEDURE AND VALIDATION) ACT, 1953

(U. P. ACT NO. XXX of 1953)

CONTENTS

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|-------------------------------------|------------------------------|
| 1. Short title and commencement. | 4. References and revisions. |
| 2. Definition. | 4. Validation. |
| 3. Procedure in hearing of appeals, | |

AUTHORITATIVE ENGLISH TEXT OF THE UTTAR PRADESH BOARD OF REVENUE (PRAKRIYA KA PRAKHYAPAN TATHA VAIDHIKARAN) ADHINIYAM, 1953

An Act to declare the powers of the Board of Revenue in the decision of certain cases and to provide for the validation of certain decisions;

Whereas it is expedient to declare the powers of the Board of Revenue in the decision of certain cases and to provide for the validation of certain decisions as hereinafter appearing;

It is hereby enacted as follows:

Prefatory Note—For Statement of Objects and Reasons, please see *Uttar Pradesh Gazette (Extraordinary)*, dated July 21, 1953.

1. Short title and commencement.—(1) This Act may be called the U. P. Board of Revenue (Declaration of Procedure and Validation) Act, 1953.

Article 227—Applicability.—The Board of Revenue is not a High Court as contemplated by Article 227 of the Constitution of India, which has reference to the High Court as constituted under Article 214, every Judge of which is appointed by the President under Article 217. The members of the Board are appointed by the Provincial Government and by no stretch of the language can the Board be included in the term "High Court"¹.

Act—if Ultra Vires.—The Board of Revenue was constituted by U. P. Acts and it is the U. P. Legislature which is competent to lay down the procedure according to which the Board is to act in exercising its judicial powers. The U. P. Legislature in passing the Act has not exceeded the legislative powers². The Act is not invalid on other grounds also. It does not amend the Civil Procedure Code, requiring the sanction of the President; it is not against natural justice, nor there is any discrimination³.

2. It shall come into force at once.

Note.—Act was passed in Hindi by the Uttar Pradesh Legislative Assembly on August 10, 1953, and by the Uttar Pradesh Legislative Council on August 29, 1953.

Received the assent of the Governor on December 1, 1953, under Article 200 of the Constitution of India and was published in *Uttar Pradesh Gazette (Extraordinary)*, dated December 5, 1953.

2. Definition.—In this Act unless there is anything repugnant in the subject or context the expression "hearing" and its grammatical variation does not include hearing under Order XLI, rule 11, of the Code of Civil Procedure, 1908, or a proceeding under sub-section (1) of Section 216 of the U. P. Land Revenue Act, 1901, or Section 268 of the U. P. Tenancy Act, 1939, or an analogous provision in any other

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| 1. Ranjit Singh v. Uttar Pradesh State, 1951 R D 281=1952 A W R 41(R). | 152=1954 A W R 256. |
| 2. Mukhtar Singh v. Board of Revenue, 1954 A 454=1954 A L J | 3. Raghubir v. Government of Uttar Pradesh, 1954 A 660=1954 A L J 656. |

law relating to admission or summary rejection of an appeal, reference or revision.

3. Procedure in hearing of appeals, references and revisions.—Nothing in Section 8 of the U. P. Land Revenue Act, 1901, in the U. P. Tenancy Act, 1939, or in any other law or rule relating to the hearing of an appeal, reference or revision by the Board of Revenue shall be construed as requiring all the members of the Board, who participate in the decision of any appeal, reference or revision or concur in, or pronounce the judgment, to actually hear, whether sitting together or separately, the parties thereto or their counsels; and it shall always be deemed to be sufficient compliance of the law that except where it is expressly provided to the contrary at least one such member has so heard them:

Provided that every member as aforesaid may, before pronouncing or concurring in the judgment, if he considers necessary, for the purpose of satisfying himself on any point involved in the appeal, reference, or revision, that he should further hear the parties or their counsel, do so either on such point alone or generally on all the points involved in such appeal, reference or revision.

Scope.—In a case under the U. P. Tenancy Act, a single member of the Board gave a judgment and for concurrence sent it to another member, who signed it without hearing the parties. On a petition moved under Article 226 of the Constitution of India it was held that the judgment passed by the other member was a nullity¹. This view was followed in writ No. 301 of 1952 in which the judgment of Mr. J. O. N. Shukla was held to be a nullity, and the case was to go back to Mr. J. O. N. Shukla for disposal of the appeal after hearing the parties. Three days after this judgment, the U. P. Act 30 of 1953 was passed, which provided that it was not necessary for all the members to actually hear the parties, and therefore when the case went back to the Board, the judgment was signed by another member without hearing the parties. On a writ petition it was held that the judgment was valid and there was no contravention of the orders of the High Court in view of the new legislation². The use of the words "except where it is expressly provided to the contrary" mean that there should be some express provision of law requiring that hearing must be given by more than one member. Order 41, Rule 30, Civil Procedure Code, does not make any express provision requiring every member of a Court to give hearing to the parties, and it does not lay down that an appeal cannot be heard by one member³.

Appeal—if includes Review.—The word "appeal" in the section includes an application for review of a decree or order made on appeal. Review is not a process which can be regarded as separate and distinct from appeal, reference and revision⁴.

4. Validation.—Every judgment made as aforesaid before the commencement of this Act in purported exercise of any such power as is mentioned in Section 8 of the U. P. Land Revenue Act, 1901, in the U.P. Tenancy Act, 1939, or in any other law and which would have been lawfully made if Section 3 had come into operation on the occasion of the hearing of the appeal, reference or revision, or the pronouncement of, or concurring in the judgment or anything done in pursuance of such judgment, shall, except where the judgment or the thing has already been set aside before the said commencement be deemed to have been lawfully heard, pronounced, concurred in or done, as the case may be. It shall further be deemed in relation to every such judgment

1. *Surajpal v. The Board of Revenue*, 1953 A 264 (F. B.)=1953 A L J 1.
2. *Raghbir v. Government of Uttar Pradesh*, 1954 A 660=1954 A L J 656.

3. *Mukhtar Singh v. Board of Revenue*, 1954 A 454=1954 A L J 152=1954 R D 119.
4. *Maktool v. The Board of Revenue*, 1954 A L J 430=1954 R D 230.

that every member (other than a member, who heard the parties or their counsel) who pronounced or concurred in the judgment, did not consider it necessary as provided in the proviso to Section 3 to hear the parties or their counsels.

THE UNITED PROVINCES BORSTAL ACT, 1938

(U. P. Act No. VII OF 1938)

CONTENTS

Sections

1. Short title, extent and commencement.
2. Definitions.
3. Establishment of Borstal institutions.
4. Appointment of Director of Borstal Institutions, officers and visiting committee.
5. Powers of Courts to pass a sentence of detention in a Borstal Institution in the case of a convict under twenty-one years of age in lieu of transportation or rigorous imprisonment.
6. Special powers of District Magistrates.
7. Power of Superintendent of jail to present prisoner less than 21 years of age before District Magistrate for detention in a Borstal Institution.
8. When action may not be taken under Section 7.
9. Application of the Code of Criminal Procedure, 1898, and the Indian Limitation Act, 1908 and provisions of appeal and revision.
10. No person who has been detained to be detained again.
11. Release on furnishing security.
12. Inquiry to be made regarding the age of the offender before the passing of an order of detention.
13. Magistrate to give grounds of his opinion before ordering detention.
- 13-A. Detention for the first time not to be regarded as a disqualification.
14. Power to release on licence.
15. Absence under licence to be

Sections

- counted towards period of detention.
16. Form of licence.
17. Suspension and revocation of licence.
18. Penalty for escape.
19. Incorrigibles.
20. Inmates appointed officers to be public servants.
21. Extra-mural custody, control and employment of inmates.
22. Penalty for introduction or removal of prohibited articles.
23. Powers to arrest for offences under Section 23.
24. Publication of penalties.
25. Officers in charge of Borstal Institution to detain persons duly committed to their custody.
26. Officers in charge of Borstal Institutions to return orders, etc. after execution or discharge.
27. Power of officer in charge to give effect to orders of certain courts.
28. Warrant of officers of such courts to be sufficient authority.
29. Procedure where officer in charge of Borstal Institution doubts the legality of order sent to him for execution.
30. Lunatic inmates, how to be dealt with.
31. Application to Borstal Institution of certain provisions of the Prisons Act 1894, and the Prisoners Act, 1900.
- 32.
33. Powers of the State Government to apply the Act to females.

ADAPTED AND MODIFIED BY THE ADAPTATION OF LAWS ORDER, 1950

[Received the assent of the Governor-General on December 13, 1938, and was published in Gazette 1938, Pt. VII, p. 269—284 under Section 76 of the Government of India Act, 1935, on December 31, 1938].

An Act to make provision for the establishment and regulation of Borstal Institutions in the United Provinces and for the detention and training of adolescent offenders therein.

Whereas it is expedient to make provision for the establishment and regulation of Borstal Institutions in the United Provinces and for the detention and training of adolescent offenders therein; it is hereby enacted as follows :

Prefatory Note :—For S. O. R., see *Gaz.*, Extra., d. Jan. 18, 1938, p. 18; for R. S. Com., see *ibid*, 1938, Pt. VII, pp. 21—24, for discussion, see L. A. Pro., d. Jan. 25, April 2nd and Aug. 2 and 8, 1938, in Vol. III, pp. 912—932, Vol. VI, p. 732 and Vol. VII, pp. 128—129 and 582—583, respectively, and L. C. Pro., d. May 6 and 11, 1938, in Vol. III, pp. 23 and 267—289, respectively.

1. Short title, extent and commencement.—(1) This Act may be called the [Uttar Pradesh] Borstal Act, 1938.

(2) It extends to the whole of [Uttar Pradesh]¹.

(3) It shall come into force on such date² as the [State Government]³ may by notification appoint in this behalf.

Note :—The Act has been extended to the merged States of Rampur, by the Rampur (Application of Laws) Act, 1950, w. e. f. Dec. 3rd, 1949 and to the merged States of Banaras and Tehri-Garhwal by the Banaras (Application of Laws) Order, 1949, and Tehri-Garhwal (Application of Laws) Order, 1949 respectively, w. e. f. Nov. 30, 1949.

2. Definitions.—In this Act, unless there is anything repugnant in the subject or context,—

(1) “Borstal Institution” means a place in which offenders may be detained under this Act and given such industrial training and other instruction and subjected to such disciplinary and moral influences as will conduce to their reformation;

(2) “Detained” means detained in a Borstal Institution;

(3) “Inmate” means any person ordered to be detained;

(4) “Offence” means—

(i) an offence punishable with transportation or rigorous imprisonment under the Indian Penal Code other than—

(a) an offence punishable with death;

(b) an offence punishable under Chapter V-A or Chapter VI of the said Code;

(ii) an offence punishable with imprisonment under the Public Gambling Act, 1867, the Opium Act, 1878, or the [Uttar Pradesh]¹ Excise Act, 1914;

(5) “Officer” means an officer of a Borstal Institution appointed in such manner as may be prescribed;

(6) ‘Prescribed’ means prescribed by rules made by the [State Government]³ under this Act;

(7) “Security for good behaviour” means security for good behaviour taken under Section 109 or Section 110 of the Code of Criminal Procedure, 1898;

(8) “Superintendent” means Superintendent of a Borstal Institution appointed in such manner as may be prescribed.

1. Subs. by the A. O. 1950 for [the United Provinces.]
2. The Act has not yet come into

force.
3. Subs. by the A. O. 1950 for [Provl. Govt.].

3. Establishment of Borstal institutions.—For the purpose of this Act the [State Government]⁴ may establish one or more Borstal Institutions.

4. Appointment of Director of Borstal Institutions, officers and visiting committee.—(1) The [State Government]⁴ shall appoint a Director of Borstal Institutions who shall exercise, subject to the orders of the [State Government]⁴, general control and superintendence of all Borstal Institutions.

(2) For every Borstal Institution the [State Government]⁴ shall appoint a superintendent, and such other officers as may be necessary.

(3) For every Borstal Institution a visiting committee shall be appointed in such manner as may be prescribed.

5. Powers of Courts to pass a sentence of detention in a Borstal Institution in the case of a convict under twenty-one years of age in lieu of transportation or rigorous imprisonment. (1) When any male person not less than fifteen or more than twenty-one years of age is convicted of an offence by a Court of Sessions, or a magistrate of the first class, or is ordered by such court or magistrate to give security for good behaviour and fails to give such security, and when, by reason of his criminal habits or tendencies or association with persons of bad character, it is expedient, in the opinion of such court or magistrate, that he should be detained, such court or magistrate may, in lieu of passing a sentence of transportation or rigorous imprisonment, pass an order of detention for a term which shall not be less than two years or more than five years when the order is passed by a Court of Sessions, and shall not be less than two years or more than three years when the order is passed by a magistrate:

Provided that the [State Government]⁴ may by rule declare that persons belonging to such criminal tribes as may be prescribed shall not be eligible to be detained, and no person belonging to any such class shall be ordered to be detained.

(2) When any magistrate, not empowered to pass such order, is of opinion that an offender convicted by him is a person in respect of whom an order should be passed in accordance with the provisions of sub-section (1) he shall without passing any sentence, record such opinion and submit his proceedings and forward the accused to the District Magistrate to whom he is subordinate. The District Magistrate to whom the proceedings are so submitted may make such further inquiry (if any) as he may deem fit and pass such order for the detention of the offender or such other sentence or order as he might have passed if the trial had been held by him from the commencement.

6. Special powers of District Magistrate.—When any male person not less than fifteen or more than twenty-one years of age has been sentenced for an offence by a magistrate to rigorous imprisonment, or having been ordered by a magistrate to give security for good behaviour has failed to give such security and has been committed to or confined in prison and no appeal has been preferred against such sentence or order within the time prescribed by law, and when by reason of such person's criminal habits or tendencies or association with persons of bad character it is expedient, in the opinion of the District Magistrate, that he should be detained, the District Magistrate, may order that such person shall, in lieu of undergoing imprisonment, be detained for a period not less than two years and not exceeding three years:

4. Subs. by the A.O. 1950 for [Prov. Govt.]

Provided that the total period of confinement in prison together with detention shall not exceed three years.

7. Power of Superintendent of jail to present prisoner less than 21 years of age before District Magistrate for detention in a Borstal Institution.—Whenever it appears to the Superintendent of a prison that any male person who is not less than fifteen or more than twenty-one years of age and who has been sentenced to transportation or rigorous imprisonment for an offence or committed to or confined in prison for failing to give security for good behaviour should, for the reasons described in sub-section (1) of Section 5, be detained, he shall cause such prisoner to be produced before the District Magistrate in whose jurisdiction the prison is situated and if the District Magistrate, after making such inquiry as he may deem proper or as may be prescribed, is satisfied that the prisoner should for the reasons described in the said sub-section be detained, he may order the prisoner to be removed from prison and detained for a period equal to the unexpired term of the transportation or imprisonment to which he was sentenced, or of the period for which security was required from him, as the case may be :

Provided that in no case shall he be detained more than for five years.

8. When action may not be taken under Section 7.—No order shall be made under the provisions of Section 7.—

- (i) until the time allowed by law for appeal against the sentence or order under which the prisoner is committed to or confined in prison, has expired or, if an appeal has been preferred until such appeal has been finally decided ; or
- (ii) if an application made on appeal or otherwise to have the sentence altered into an order of detention, has been rejected by an Appellate Court or the High Court ; or
- (iii) in the case of any person who has been sent to a Reformatory School in accordance with the provisions of the Reformatory Schools Act ; or
- (iv) if the unexpired term of the transportation or imprisonment to which the prisoner was sentenced, or of the period for which security was required from him is less than one year.

9. Application of the Code of Criminal Procedure, 1898 and the Indian Limitation Act, 1908 and provisions of appeal and revision.—(1) Subject to the provisions of sub-section (2) of this section the provisions of the Code of Criminal Procedure, 1898, relating to appeal, reference and revision and Articles 154 and 155 of the Indian Limitation Act, 1908, shall apply in the case of an order of detention as if the order had been a sentence of imprisonment for the same period as the period for which detention was ordered.

(2) Notwithstanding anything contained in Section 423 of the Code of Criminal Procedure, 1898, when a person who at the time of his conviction was not less than fifteen or more than twenty-one years of age has been convicted of an offence or when such person, on being ordered to furnish security for good behaviour, has failed to furnish such security, an Appellate Court or the High Court in the exercise of

its powers of revision may in pursuance of sub-section (1) and the provisions of the Code of Criminal Procedure, 1898, and after making such inquiry as it may deem fit, alter a sentence of imprisonment or an order of commitment to prison under Section 123 of the Code of Criminal Procedure, to an order of detention, if, for reasons described in sub-section (1) of Section 5, it considers such alteration expedient, and may alter an order of detention to a sentence of imprisonment or an order of commitment to prison under Section 123 of the Code of Criminal Procedure, as the case may be, provided that the sentence of imprisonment, order of commitment, or order of detention shall not be in excess of the powers of the trial magistrate or court.

(3) Any person who has been ordered to be detained in a Borstal Institution under the provisions of Section 6 for a period to expire after the term of imprisonment to which he was sentenced would expire had the order not been passed, may subject to the provision of sub-section (5) appeal to the Court of Sessions, and such court may either confirm the order or set it aside and restore the sentence of imprisonment or if the order is for more than two years, reduce it to a term not shorter than the residue of imprisonment to which the offender was sentenced.

(4) Any person ordered by a Court of Sessions under the provision of sub-section (3) to be detained for a period to expire after the term of imprisonment to which he was sentenced would expire had such order not been passed may, subject to the provisions of sub-section (5), appeal within thirty days of the order to the High Court and the High Court may pass any such order as the Sessions Court might have passed.

(5) An appeal shall not lie under sub-section (3) or sub-section (4) against any finding or fact but only on the ground that the order appealed against is illegal, or unduly severe.

10. No person who has been detained to be detained again.— No person who has been previously detained for the whole period prescribed in an order of detention or who has been transferred to prison under Section 19 of this Act, shall again be ordered to be detained.

11. Release on furnishing security.—Any person detained for failure to furnish security shall be released on furnishing security.

12. Inquiry to be made regarding the age of the offender before the passing of an order of detention. (1) Before passing an order of detention under this Act the magistrate, district magistrate or court, as the case may be, shall inquire, or cause inquiry to be made into the question of the age of the offender, and after taking such evidence (if any), as may be deemed necessary or proper shall record a finding thereon.

(2) A similar inquiry shall be made and finding recorded by every magistrate not empowered to pass an order of detention under this Act before submitting his proceedings and forwarding the accused to the district magistrate as required by sub-section (2) of Section 5 of this Act.

13. Magistrate to give grounds of his opinion before ordering detention.—When any magistrate, district magistrate or court of

Sessions orders an offender to be detained, he or it, as the case may be, shall record the ground of his or its opinion that it is expedient that the offender be detained.

13-A. Detention for the first time not to be regarded as a disqualification.—The detention of a person in a Borstal Institution for the first time under the provisions of this Act shall not be regarded as a conviction for the purposes of any disqualification attaching to a conviction for any offence.

14. Power to release on licence.—Subject to any general or special directions of the [State Government]⁵ the Visiting Committee with the sanction of the Director of Borstal Institutions, may at any time after the expiration of six months, or in the case of females, three months from the commencement of the term of detention, if satisfied that the inmate is likely to abstain from crime, and to lead a useful and industrious life, by licence permit him to be discharged from the Borstal Institution on condition that he be placed under the supervision or authority of such servant of the [Government] or such secular institution or such person or religious society belonging to the same religion as the inmate named in the licence who may be willing to take charge of him. A licence granted under this section shall be in force until the term for which the inmate was ordered to be detained has expired unless sooner suspended, revoked or forfeited.

15. Absence under licence to be counted towards period of detention.—The time during which an inmate is absent from a Borstal Institution on a licence granted under Section 14 shall be reckoned as part of the period of detention.

16. Form of licence.—Every licence granted under the provisions of Section 14 shall be in such form and shall contain such conditions as the [State Government]⁶ may, by general or special order, direct.

17. Suspension and revocation of licence.—Subject to any general special directions of the [State Government]⁵ a licence granted under Section 14 may be suspended for a period not exceeding three months by the Superintendent of a Borstal Institution or may be suspended or revoked at any time by the Visiting Committee. Where the licence of any inmate has been suspended or revoked, he shall return to the Borstal Institution, and, if he fails to do so, he may be arrested without warrant and taken to the Institution.

18. Penalty for escape.—If any inmate escapes from a Borstal Institution before the expiry of the period for which he was ordered to be detained or if any inmate absent on licence from a Borstal Institution escapes from the supervision or authority of any servant of the [Government]⁶ or secular institution or person or religious society in whose charge he was placed, or fails on the suspension or revocation of his licence to return to the Borstal Institution he may on conviction by a magistrate be punished with imprisonment of either description for a term which may extend to two years or with fine or with both, and his licence, if any, shall be forfeited with effect from the date of his escape or failure to return, as the case may be. An offence under this section

5. Subs. by the A. O. 1950 for [Prov. Govt.]

6. Subs. by *ibid* for [Crown].

shall be deemed to be a cognizable offence within the meaning of the Code of Criminal Procedure, 1898.

19. Incorrigibles.—Where an inmate is reported to the [State Government]⁷ by the Visiting Committee to be incorrigible or to be exercising a bad influence on the other inmates of the institution or is convicted under Section 18, or is reported by the Superintendent to have committed an offence which has been declared to be a major Borstal Institution offence by rules made by the [State Government]⁷ in pursuance of the provisions of clause (14) of Section 32 of this Act the [State Government]⁷ may commute the residue of the term of detention to such term of imprisonment of either description not exceeding such residue as the [State Government]⁷ may direct and may order the transfer of the inmate to any jail in [Uttar Pradesh]⁸ in order to complete the said term of imprisonment.

20. Inmates appointed officers to be public servants.—Inmates who have been appointed as officers shall be deemed to be public servants within the meaning of the Indian Penal Code.

21. Extra-mural custody, control and employment of inmates.—An inmate when being taken to or from any Borstal Institution in which he may be lawfully detained or when working outside or being otherwise beyond the limits of any such Borstal Institution in or under the lawful custody or control of an officer belonging to such Borstal Institution shall be deemed to be under detention and shall be subject to same incidents as if he were actually in a Borstal Institution.

22. Penalty for introduction or removal of prohibited articles.—Whoever, contrary to any rule under Section 32, introduces or removes, or attempts by any means whatever to introduce or remove, into or from any Borstal Institution or supplies or attempts to supply to any inmate outside the limits of such Institution any prohibited articles, and every officer of a Borstal Institution who, contrary to such rule, knowingly suffers any such articles to be introduced into or removed from any Borstal Institution to be possessed by any inmate, or to be supplied to any inmate outside the limits of Borstal Institution, and whoever, contrary to any such rule, communicates or attempts to communicate with any inmate, and whoever abets the commission of any of the aforesaid acts, shall on conviction before a magistrate, be liable, to imprisonment for a term not exceeding six months or to fine not exceeding two hundred rupees or to both.

23. Powers to arrest for offences under Section 23. When any person in the presence of any officer of a Borstal Institution commits any offence specified in the last foregoing section and refuses on demand of such officer to give his name and address or gives a name or address which such officer knows, or has reason to believe, to be false, such officer may arrest him, and shall without unnecessary delay make him over to a police officer, and thereupon such police officer shall proceed as if the offence had been committed in his presence.

24. Publication of penalties.—The Superintendent shall cause to be affixed, in a conspicuous place outside the Borstal Institution, a

7. Subs. by the A. O. 1950 for [Prov. Govt].

8. Subs. by *ibid* for [the United Provinces.]

notice in English and the Vernacular setting forth the acts prohibited under Section 22 and the penalties incurred by their commission.

25. Officers in charge of Borstal Institution to detain persons duly committed to their custody.—The Officer-in-charge of a Borstal Institution shall receive and detain all persons duly committed to his custody under this Act according to the directions contained in the order by which such person has been committed or until such person is discharged, or removed in due course of law.

26. Officer in charge of Borstal Institutions to return orders, etc., after execution or discharge.—The officer in charge of a Borstal Institution shall forthwith, after the execution of every such order as aforesaid or after the discharge of the person committed thereby, return such order to the magistrate, district magistrate or court by which the same was issued or made, together with a certificate, endorsed thereon and signed by him, showing how the same has been executed, or why the person committed thereby has been discharged from detention before the execution thereof.

27. Power of officer in charge to give effect to orders of certain courts.—[Officers in charge of Borstal Institutions may give effect to any order for the detention of any person passed or issued—

- (a) by any Court or Tribunal in a Part A State or Part C State; or
- (b) by any Court or Tribunal outside India acting under the authority of the Central Government; or
- (c) by any Court or Tribunal in a Part B State, if the reception and detention in Uttar Pradesh of the persons ordered to be detained by such Court or Tribunal is authorized by general or special order of the State Government.]⁹

28. Warrant of officers of such courts to be sufficient authority.—An order under the official signatures of an officer of such court or tribunal as is referred to in Section 27 shall be sufficient authority for detaining any person, in pursuance of the order passed upon him.

29. Procedure where officer in charge of Borstal Institution doubts the legality of order sent to him for execution.—(1) Where an officer in charge of a Borstal Institution doubts the legality of an order sent to him for execution of the competency of the person whose official seal or signature is affixed thereto to pass the order, he shall refer the matter to the [State Government]¹⁰ by whose order on the case he, and all other public officers, shall be guided as to the future disposal of the inmates.

(2) Pending a reference under sub-section (1) the inmate shall be detained in such manner and with such restrictions or mitigations as may be specified in the warrant order.

30. Lunatic inmates how to be dealt with.—(1) Where it appears to the [State Government]¹⁰ that any person detained under any order is of unsound mind, the [State Government]¹⁰ may order his removal to a lunatic asylum or other place of safe custody within the [State]¹¹ there to be kept and treated as the [State Government]¹⁰

9. Subs. by the A. O. 1950 for S. 27.

10. Subs. by *ibid* for (Prov. Govt.)
11. Subs. by *ibid* for (Province).

directs during the remainder of the term for which he has been ordered to be detained, or, if on the expiration of that term it is certified by a medical officer that it is necessary for the safety of the inmate or others that he should be further detained under medical care or treatment, then until he is discharged according to law.

(2) Where it appears to the [State Government]¹² that an inmate so kept and treated has become of sound mind, the [State Government]¹² shall, by a warrant directed to the person having charge of the inmate, remand him, if still liable to be detained, to the Borstal Institution from which he was removed, or to another Borstal Institution with the [State]¹³ or order him to be discharged on a licence or otherwise, or if he is no longer liable to be detained, order him to be discharged.

(3) The provisions of Section 31 of the Indian Lunacy Act, 1912¹⁴ shall apply to every person confined in a lunatic asylum under sub-section (1) after the expiration of the term for which he was ordered to be detained; and the time during which an inmate is confined in a lunatic asylum under that sub-section shall be reckoned as part of the term of detention which he may have been ordered to undergo.

(4) In any case in which a [State Government]¹² is competent under sub-section (1) to order the removal of an inmate to a lunatic asylum or other place of safe custody within the [State]¹⁵ the [State Government]¹² may order his removal to any such asylum or place within [any other State]¹⁶ by agreement with [the Government of such other State]¹⁷ and the provisions of this section respecting the custody, detention, remand and discharge of an inmate removed under sub-section (1) shall, so far as they can be made applicable, apply to an inmate removed under this sub-section.

31. Application to Borstal Institution of certain provisions of the Prisons Act 1894, and the Prisoners Act, 1900.--Subject to the rules made under Section 32 of this Act, the provisions of Section 12 and Chapter XI of the Prisons Act, 1894, and of Sections 35 to 50 (inclusive), and the rules made by the [State Government]¹² under Section 51 of the Prisoners Act, 1900¹⁸, shall apply so far as may be to Borstal Institutions established under this Act, and all references to prisoners, imprisonment or confinement in the said sections, chapters and rules shall be construed as referring to inmates, Borstal Institutions and detention :

Provided that the punishment of whipping or the imposition of cross bar fetters shall not be awarded to an inmate.

32. The [State Government]¹² may after previous publication make rules¹⁹ consistent with this Act -

(1) for the regulation, management and classification of Borstal Institutions established under this Act and the description and construction of wards, cells and other places of detention ;

(2) for the regulation by number or otherwise of the inmates to be detained in each class of institution ;

12. Subs. by *ibid* for [Prov'l. Govt].

13. Subs. by the A. O. 1950 for [province].

14. Subs. by *ibid* for [any other Province or within an Indian State].

15. Subs. by *ibid* for [the Govern-

ment of such other province or with that state or the ruler thereof, as the case maybe].

16. *Ibid* Vol. IV p. 500.

17. Rules have not yet been made under S. 32.

(3) for defining the powers and duties of the Director of Borstal Institutions;

(4) for the government of Borstal Institutions, and the appointment, conditions of service, guidance, control punishment and dismissal of superintendents and other officers employed in Borstal Institutions, and for the defining of their responsibilities, duties, disabilities and powers;

(5) for the maintenance of records and the preparation and submission of reports;

(6) for the selection and appointment of inmates as inmate officers and their reduction and dismissal and for defining the responsibilities, duties and powers of such officers;

(7) for the temporary detention of inmates until arrangements can be made for their admission to Borstal Institutions;

(8) for the admission, removal and discharge of inmates, and for the disposal of their effects during their detention;

(9) for feeding, clothing and bedding of inmates;

(10) for the custody, discipline, grading, treatment, education, training and control of inmates;

(11) for the employment, instruction and control of inmates within or without Borstal Institutions, and the disposal of the proceeds of their labour;

(12) for the treatment of sick inmates;

(13) for classifying and prescribing the forms of education, instruction, employment and labour and regulating the periods of rest;

(14) (i) for defining the acts, which shall constitute Borstal Institution offences;

(ii) for determining the classification of Borstal Institution offences into major and minor offences;

(iii) for fixing the punishments admissible under this Act which shall be awardable for the commission of the various Borstal Institution offences or the classes thereof;

(iv) for declaring the circumstances in which acts constituting both a Borstal Institution offence and an offence under the Indian Penal Code may or may not be dealt with as Borstal Institution offence;

(v) for the award of marks and the shortening of periods of detention;

(vi) for regulating the use of arms against any inmate or body of inmates and the use of letters in the case of an outbreak or attempt to escape;

(vii) for defining the circumstances and regulating the conditions under which inmates in danger of death may be released;

(viii) for regulating the transfer from one part of ¹⁸[the whole of India except Part B States] to another of inmates whose term of detention is about to expire;

18. Subs. by the A. O. 1950 for [all the Provinces of India] which had been subs. by the India

(Adaptation of Existing Indian Laws) Order, 1947 for [British India].

- (15) for defining articles the introduction or removal of which into or out of Borstal Institutions without due authority is prohibited ;
- (16) for the classification and the separation of inmates ;
- (17) for rewards for good conduct ;
- (18) for regulating the transfer of inmates from one Borstal Institution to another or to an hospital or asylum and from a Borstal Institution to a prison, or from a prison to a Borstal Institution ;
- (19) for the treatment, transfer and disposal of criminal lunatics or recovered criminal lunatics confined in Borstal Institutions ;
- (20) for regulating the transmission of appeals and petitions from inmates and their communications with their friends ;
- (21) for the appointment and guidance of visitors of Borstal Institutions ;
- (22) for prescribing conditions on which licences may be granted, suspended, revoked, or cancelled ;
- (23) for the appointment, powers and control of servants of the [Government]¹⁹ referred to in Section 14 ;
- (24) for defining the powers and duties of after-care societies and guardians and the conditions on which financial assistance may be given to them ;
- (25) for the appointment of visiting committees ; and
- (26) generally for the purpose of carrying out the provisions of this Act.

33. Powers of the State Government to apply the Act to females. -- The [State Government]²⁰ after giving by notification in the official *Gazette* not less than three months' notice of its intention to do so may, by like notification direct, that the provisions of Sections 5, 6 and 7 shall extend to females, and upon such direction being notified the said sections shall whilst the direction is in force have effect as if the word "male" were omitted.

THE BUNDELKHAND ALIENATION OF LAND ACT, 1903

([UTTAR PRADESH] ACT No. II OF 1903)

CONTENTS

Sections	Sections
PRELIMINARY 1. Short title, extent and commencement. 2. Definitions. PERMANENT ALIENATION OF LAND 3. Sanction of Collector required to certain permanent alienation. 4. Agricultural tribes. 5. Saving for rights in land alienated. TEMPORARY ALIENATIONS OF LAND 6. Forms of mortgage permitted in certain cases. 7. Rules applying to permitted	mortgages. 8. Conditions in permitted mortgages. 9. Power to revise mortgage made in form not permitted and mortgages by conditional sale. 10. Future mortgage by way of conditional sale not permitted. 11. Leases. 12. Restriction on power to make further temporary alienation. 13. Ejectment of mortgagee or lessee, remaining in possession after term. 19. Subs. by the A. O. 1950 for Crown]. 20. Subs. by <i>ibid</i> for [Provl. Govt.],

- GENERAL PROVISIONS
- | | |
|---|--|
| 14. Effect of permanent alienation made without sanction. | 18. Record-of-rights and annual register. |
| 15. Sanction of Collector required to certain alienations of, or charges on, produce of land. | 19. Exercise of powers of Collector. |
| 16. Execution—sale of land forbidden. | 20. Application of certain provisions of the [Uttar Pradesh] Land Revenue Act, 1901. |
| 16A. Pre-emption. | 21. Appearance of legal practitioners forbidden. |
| 17. Transfer to Collector of decrees on certain mortgages. | 22. Jurisdiction of Civil Courts excluded. |
| 17A. Execution of rent Court decree | 23. Exemption. |
| | 24. Power to make rules. |

AS MODIFIED UPTO U. P. ACT XVIII OF 1934

(Received the assent of the Lieutenant-Governor on the 2nd May, 1903, and of the Governor-General on the 29th May, 1903, and was published under Section 40 of the Indian Councils Act, 1861, on the 13th June, 1903.)

An Act to amend the Law relating to Agricultural Land in Bundelkhand

Whereas it is expedient to amend the law relating to agricultural land [in Bundelkhand and certain other parts of the [Uttar Pradesh]];

It is hereby enacted as follows ;

Legislative changes :—The words in brackets were substituted for the words “in that part of the U. P. known as Bundelkhand” by Section 2 of U. P. Act IV of 1915 read with A. O. 1950.

Prefatory note :—The following extract from the Statement of Objects and Reasons may be usefully noticed :

“In order to relieve the indebtedness of landholders in Bundelkhand, and to improve their condition for the future the Government is proposing to repeal Jhansi Encumbered Estates Act, 1882, and to replace it by a measure of more extended scope, and has undertaken, where necessary the readjustment of the revenue demand in the various districts and sub-divisions of a district included in that tract. The attempt made in the years 1882-1887 to relieve the indebted proprietors of the Jhansi district did not meet with the degree of success anticipated; partly because a measure which was strongly advocated at the time—the limitation of the landholder’s power of transfer of his land—was not adopted. While the proprietary body in Bundelkhand differs materially from that of other portions of the [Uttar Pradesh] the conditions of that tract approximate more closely to those of the Punjab than is the case with the rest of the [State]. In these circumstances it is proposed to extend to Bundelkhand, with such modifications as may be necessary the law recently introduced in the Punjab for the restriction of alienation of agricultural land.

“The Bill differs from Act No. XIII of 1900 chiefly in the omission of certain provisions given retrospective effect to the law. In view of the limited area and of the different conditions of the tract to which the Bill applies, it has not been thought necessary to include in its scope ‘agriculturist,’ as defined in the Punjab Act, or to allow for groups of agricultural tribes and districts. As a usufructuary mortgage is deemed to be a transfer, under the provisions of the Tenancy Act, the rights of a mortgagor as tenant in his own holding will be governed by that Act to which a reference has been made in Section 6 of the Bill”—*vide U. P. Gazette, 1903, part V. p. 33.* For the Select Committee Report see *U. P. Gazette, 1903, part V. p. 110* and for Proceedings in Council, see *U. P. Gazette, 1903 part V. pp. 60, 129, and 177.*

PRELIMINARY

1. Short title, extent and commencement.—(1) This Act may be called the Bundelkhand Alienation of Land Act, 1903.

[(2)] It extends to the districts of Banda, Hamirpur, Jhansi, and Jalaun, to the Meja, Bara, and Karchana sub-divisions of the Allahabad District, to the parganas of Dudhi, Bijaigarh, Agori and Singrauli

in the Mirzapur district and to the trans-Jamna portion of the Etawah District ; and]

(3) It shall come into force on such day as the [State Government] may, by notification in the [official Gazette], direct.

Legislative changes :—(1) Sub-section (2) of Section 1 was substituted by Section 3 of Act IV of 1915.

(2) The words [State Govt.] and [official Gazette] were substituted for the words [Local Govt.] and [Gazette] by A. O. 1937 read with A. O. 1950. The words [Uttar Pradesh] were substituted for the words [United Provinces] by A. O. 1950 throughout the Act.

Note :—(1) The Act came into force on July 1, 1902, (*see* Not. no. 1976/I-779F, dated June 20, 1903, in *Gaz.*, 1903, Part I., p. 490.) It was enforced in the parganas of Agori, Bijaigarh, Budhi, and Singrauli in the Mirzapur district and the trans-Jamna portion of the Etawah district on Dec. 17, 1915, (*see* Not. no. 2439/I—568, d. Dec. 6, 1915, in *Gaz.*, 1916, Pt. I, p. 2424.)

(2) The Act stands repealed where the provisions of U. P. Zamindari Abolition and Land Reforms Act, 1950 (Act I of 1950) have been applied *vide* Section 67 of U. P. Act XVI of 1953.

Scope and object :—The plan of the Act is to control contracts of attempted alienation, which would have the effect of placing immovable property permanently in the hands of persons not members of the agricultural tribe, and therefore when mortgagee is also a member of the same tribe, though he cannot bring the property to sale in execution, a remedy has been given to him by providing for foreclosure¹. It is intended to protect certain class of landholders against alienation of their proprietary rights², and its policy is to prevent non-agriculturists from acquiring property³. Section 16 of the Act is of retrospective effect⁴.

2. Definitions.—In this Act, unless there is anything repugnant in the subject or context,—

- (1) all expressions which are defined by Section 4 of the Agra Tenancy Act, 1901, or by Section 4 of the [Uttar Pradesh] Land Revenue Act, 1901, shall, subject to the provisions of this Act, have the meanings assigned to them in the said sections respectively ; and the expressions “record-of-rights” and “annual register” shall have the meaning assigned to them, respectively in Chapter III of the said last mentioned Act ;
- (2) the expression “land means land which is not occupied as the site of any building in a town or village, and is occupied or let for agricultural purposes or for purposes subservient to agriculture or for pasture, and includes,—
 - (a) the sites of buildings and other structures on such land ;
 - (b) a share in the profits of a mahal or sir ;
 - (c) any dues or any fixed percentage of the land revenue payable by an inferior proprietor to a superior proprietor ;
 - (d) a right to receive rent ;
 - (e) any right to water enjoyed by the owner or occupier of land as such ;
 - (f) any well used by its owner for the purpose of irrigating land owned or occupied by him, and]

1. *Ram Sahai Singh v. Debi Din*, 1926 A 617 (F B)

2. *Kalka Prasad v. Raj Rani*, 41 A 294.

3. *Ram Nath v. Harani and Jhuari*, 37 A 467.

4. *Kalika Prasad v. Ajudhia Prasad*, 1929 A 421=51 A 780.

in the Mirzapur district and to the trans-Jamna portion of the Etawah District ; and]

(3) It shall come into force on such day as the [State Government] may, by notification in the [official Gazette], direct.

Legislative changes :—(1) Sub-section (2) of Section 1 was substituted by Section 3 of Act IV of 1915.

(2) The words [State Govt.] and [official Gazette] were substituted for the words [Local Govt.] and [Gazette] by A. O. 1937 read with A. O. 1950. The words [Uttar Pradesh] were substituted for the words [United Provinces] by A. O. 1950 throughout the Act.

Note :—(1) The Act came into force on July 1, 1902, (*see* Not. no. 1976/I-779F, dated June 20, 1903, in *Gaz.*, 1903, Part I., p. 490.) It was enforced in the parganas of Agori, Bijaigarh, Budhi, and Singrauli in the Mirzapur district and the trans-Jamna portion of the Etawah district on Dec. 17, 1915, (*see* Not. no. 2439/I—568, d. Dec. 6, 1915, in *Gaz.*, 1916, Pt. I, p. 2424.)

(2) The Act stands repealed where the provisions of U. P. Zamindari Abolition and Land Reforms Act, 1950 (Act I of 1950) have been applied *vide* Section 67 of U. P. Act XVI of 1953.

Scope and object :—The plan of the Act is to control contracts of attempted alienation, which would have the effect of placing immovable property permanently in the hands of persons not members of the agricultural tribe, and therefore when mortgagee is also a member of the same tribe, though he cannot bring the property to sale in execution, a remedy has been given to him by providing for foreclosure¹. It is intended to protect certain class of landholders against alienation of their proprietary rights², and its policy is to prevent non-agriculturists from acquiring property³. Section 16 of the Act is of retrospective effect⁴.

2. Definitions.—In this Act, unless there is anything repugnant in the subject or context,—

- (1) all expressions which are defined by Section 4 of the Agra Tenancy Act, 1901, or by Section 4 of the [Uttar Pradesh] Land Revenue Act, 1901, shall, subject to the provisions of this Act, have the meanings assigned to them in the said sections respectively ; and the expressions “record-of-rights” and “annual register” shall have the meaning assigned to them, respectively in Chapter III of the said last mentioned Act ;
- (2) the expression “land means land which is not occupied as the site of any building in a town or village, and is occupied or let for agricultural purposes or for purposes subservient to agriculture or for pasture, and includes,—
 - (a) the sites of buildings and other structures on such land ;
 - (b) a share in the profits of a mahal or sir ;
 - (c) any dues or any fixed percentage of the land revenue payable by an inferior proprietor to a superior proprietor ;
 - (d) a right to receive rent ;
 - (e) any right to water enjoyed by the owner or occupier of land as such ;
 - (f) any well used by its owner for the purpose of irrigating land owned or occupied by him, and]

1. *Ram Sahai Singh v. Debi Din*, 1926 A 617 (F B)

2. *Kalka Prasad v. Raj Rani*, 41 A 294.

3. *Ram Nath v. Harani and Jhuari*, 37 A 467.

4. *Kalika Prasad v. Ajudhia Prasad*, 1929 A 421=51 A 780.

- [(g) in the portions of the Mirzapur District to which this Act applies, the right of a permanent tenure-holder, a fixed rate tenant, or other person having an interest in land which is both heritable and transferable to the same extent as a proprietary interest ;]
- (3) the expression "permanent alienation" includes sales, exchanges, gifts, and wills, but does not include any gift for a religious or charitable purpose whether made *inter vivos* or by will ;
- (4) the expression "usufructuary mortgage" means a mortgage by which the mortgagor delivers proprietary possession of the mortgaged land to the mortgagee and authorizes him to retain such possession until payment of the mortgage-money, and to receive the rents and profits of the land and to appropriate them in lieu of interest or in payment of the mortgage-money, or partly in lieu of interest and partly in payment of the mortgage-money ;
- (5) the expression "conditional sale" includes any agreement whereby in default of payment of the mortgage-money or interest at a certain time the land will be absolutely transferred to the mortgagee and any agreement whereby the mortgagor binds himself to repay the money on a certain date, and transfers the mortgaged property absolutely to the mortgagee, but subject to a proviso that he will retransfer it to the mortgagor upon payment of mortgage-money as agreed ; and
- (6) the expression "legal practitioner" means any legal practitioner within the meaning of the Legal Practitioners Act, 1879 ;
- (7) The expression "proprietor" and "proprietary" shall so far as is required by clause (g) of definition (2), of Section 2, be deemed to refer to a person and right specified in that clause.]

Legislative changes:—The word 'and' at the end of clause (d) of sub-sec. (1) was omitted. Clauses (f) and (g) in sub-section (2) of Section 2 were added by Section 4 (2) of U. P. Act IV of 1915. Sub-section (7) was added by Section 4 (3) of *ibid.*

PERMANENT ALIENATION OF LAND

3. Sanction of Collector required to certain permanent alienation.—(1) A person who desires to make a permanent alienation of his land shall be at liberty to make such alienation where—

- (a) the alienor is not a member of an agricultural tribe ; or
 - [(b) the alienee is either a member of the same agricultural tribe as the alienor, or is a member of an agricultural tribe and a resident of the district in which the land is situated.]
- (2) Except in the cases provided for in sub-section (1), a permanent alienation of land shall not take effect as such unless and until sanction is given thereto by the Collector of the district in which the land is situated :

Provided that sanction may be given after the act of alienation is otherwise completed.

(3) The Collector shall inquire into the circumstances of the alienation, and shall have discretion to grant or refuse by an order in writing the sanction required by sub-section (2).

(4) Nothing in this section shall affect sales ordered or permitted under the provisions of the Bundelkhand Encumbered Estates Act, 1903.

Legislative changes:—Clause (b) of sub-section (1) of Section 3 was substituted by Section 5 of U. P. Act IV of 1915.

Pre-emption—The sanction contemplated by this section applies to a voluntary transfer, and there is nothing in the Act, which provides for sanction to be given to an intending pre-emptor to bring his suit. But a decree cannot be granted in favour of a person who cannot purchase the property, being not a member of an agricultural tribe⁵, as the policy of the Act is to prevent persons who are not members of an agricultural tribe from acquiring properties⁶.

Foreclosure—Foreclosure is also a permanent alienation and is not permitted under the Act, even if the right to foreclose was given under a deed executed prior to the passing of the Act⁷, nor can such a mortgagee obtain the property by means of a private sale⁸.

Alienee—meaning—Alienee in Section 3 (b) means the person who on the face of the instrument is the transferee. It cannot be given an extended meaning so as to include both ostensible alienee and the real alienee⁹. If the ostensible alienee is an agriculturist but he holds property for third party, who is a non-agriculturist no resultant trust can accrue in favour of the beneficial owner¹⁰.

Sanction after Alienation—A sanction given after the alienation would not be bad. However, in view of Section 14 the sanction must be given within twenty years of the alienation, and not afterwards. A sanction given after this period would be invalid and can be challenged in Court^{10a}.

4. Agricultural tribes.—The [State] Government shall, by notification in the [official Gazette], * * * determine what bodies of persons in any district or sub division of a district are to be deemed to be agricultural tribes for the purposes of this Act.

Legislative changes:—The words [published with the previous sanction of the G.-G.-in-Council] were omitted by Section 6 of U. P. Act IV of 1915.

Agricultural Tribes The following have been declared to be agricultural tribes:—

(1) Thakurs.	
(2) Brahmans (Except Ma:wari Brahmans).	Notification No. 1977/1-779F dated 20-6-1903, published in the U. P. Gazette dated 27-6-1903, Part I page 490.
(3) Kurmis.	
(4) Ahirs.	
(5) Bhuihars.	
(6) Malis.	Notification No. 1977/1-779F dated 20-6-1903, published in the U. P. Gazette dated 27-6-1903, Part I page 490.
(7) Kachis.	
(8) Lodhs.	
(9) Gadarias.	
(10) Murais.	
(11) Musselman Rajputs.	
(12) Gujars of Jalaun District (<i>vide</i> Notification No. 112/1-779F dated 12th January, 1904.)	Notification No. 112/1-779F dated 12-1-1904, published in the U. P. Gazette dated 19-1-1904, Part I page 490.

5. *Suraj Bhan v. Somwarpuri*, 17 A 662, = 13 A L J 949, *But see Zaman Khan v. Bahadur*, 1840 A 371, where this view has been dissenting and now in view of Section 16A a suit for pre-emption cannot be filed without the sanction of the Collector.
6. *Ramnath v. Har Narain*, 27 A 467 = 13 A L J 662.

7. *Derkinandan v. Badri Prasad*, 1945 A 141 = 1945 A L J 83 = 1945 O W N 52 (HC).
8. *Ibid.*
9. *Bhagwati Prasad Singh v. Hari Har Prasad Singh*, 1928 A 511.
10. *Devkinandan v. Badri Prasad*, 1945 A 141.
- 10a. *Panchaiti Akhara v. Jitnarain*, I L R 1950 A 499.

(13) Gonds of village.

(a) Lakhangri } Pargana Madanpur, District Jhansi
 (b) Gonthra } by Notification No. 1776/1-378
 (c) Papro } dated 27-8-1915.

(14) The inhabitants of those portions of Etawah and Mirzapur District to which the Act applies (*vide* Notification No. 2443/1-568 dated 6-12-1915.)

The term Brahmo Samaj includes Brahmo Bhats¹¹. Hindu Ghosis of Jalaun District are members of agricultural tribes within the meaning of the Act¹². Chaubeys of Godhra Ka'an are not agriculturists, as the character of an agriculturist under this Act is a creation of the notification of the Government under Section 4¹³.

5. Saving for rights in land alienated.—When a Collector sanctions a permanent alienation of land, his order shall not be taken to decide or affect any question of title, or any question relating to any reversionary right or right of pre-emption.

TEMPORARY ALIENATIONS OF LAND

6. Forms of mortgage permitted in certain cases.—If a member of an agricultural tribe mortgages his land and the mortgagee is not a member of the same tribe, [or a member of an agricultural tribe and a resident of] the district, in which the land is situated, the mortgage shall be made in one of the following forms :—

- (a) in the form of a usufructuary mortgage, by which the mortgagor delivers proprietary possession of the land to the mortgagee and authorizes him to retain such possession and to receive the rents and profits of the land in lieu of interest and towards payment of the principal, on condition that after the expiry of the term agreed on, or (if no term is agreed on, or if the term agreed on exceeds twenty years) after the expiry of twenty years, the land shall be re-delivered to the mortgagor ; or
- (b) in the form of a mortgage without possession, subject to the condition that, if the mortgagor fails to pay principal and interest according to his contract, the mortgagee may apply to the Collector to place him in possession for such term not exceeding twenty years, as the Collector may consider to be equitable, the mortgage to be treated as a usufructuary mortgage for the term, of the mortgagee's possession and for such sum as may be due to the mortgagee on account of the balance of principal due and of interest due not exceeding the amount claimable as simple interest at such rate and for such period as the Collector thinks reasonable ; or
- (c) in the form of a written usufructuary mortgage by which the mortgagor recognizes the mortgagee as a landholder and himself remains in cultivating occupancy of the land as a tenant for such term as may be agreed upon, subject to the condition that if the mortgagor is ejected, or surrenders, or abandons cultivating occupancy of the land, the mortgage shall take effect as a usufructuary mortgage in form (a) for such terms not exceeding twenty years from the date of the ejectment, surrender, or abandonment,

11. *Ram Prasad v. Gore Lal*, 49 A 887=25 A L J 678.

12. *Kalka Prasad v. Raja Ram*, 41 A 294=17 A L J 294.
 13. *Mahabir Prasad v. Mahesh Prasad*, 1930 A 856.

and for such sum of money as the Collector considers reasonable ; or

(d) in any form which the [State Government] may, by general or special order, permit to be used :

[Provided that a mortgage shall not be made in form (a) without the previous sanction of the Collector of the district in which the land is situated.]

Legislative changes :—The words in brackets in 1st para were substituted for the words "or the mortgagor and mortgagee are not members of agricultural tribes and both residents of" by Section 7 (1) of U. P. Act IV of 1915.

The proviso to clause (d) of Section 6 was added by Section 3 of U. P. Act XVIII of 1934.

Analogous Law :—See Section 13 of the U. P. Regulation of Agricultural Credit Act.

Object of the section :—The object of the section is to prevent the land from passing out of the ownership of the proprietor. A Division Bench of the Allahabad High Court has expressed the object of the section in the following terms :—

"Section 6 provides that a member of an agricultural tribe can make a mortgage in one of the prescribed forms and not in another. Generally speaking the object of the section is to minimise the chances of foreclosure, if not altogether to prevent it."¹⁴

Delivery of proprietary possession :—Possession may be actual or constructive. When the land is in possession of tenants, a notice to them to make payments of rent is sufficient constructive delivery of possession.¹⁵ In many cases actual physical delivery of property is impossible as for instance, where property is in possession of tenants or lessees; in such cases delivery of title deeds is sufficient.¹⁶ Delivery of proprietary possession would therefore mean that the possession of the mortgagee would be such as the proprietor himself had.

Scope :—The provisions of the Act are mandatory on Civil Court and a Court will refuse to pass a final decree on a mortgage in contravention of this section independently of any objection raised by the defendant.¹⁷ There is nothing in the Act to authorise a Collector to make a partition of the patti for the benefit of the mortgagee from a co-sharer.¹⁸ Mortgage not in proper form can be raised by the Collector when it is sought to be enforced.¹⁹

7. Rules applying to permitted mortgages.—In the case of mortgages made under Section 6—

- (1) no interest shall accrue during the period for which the mortgagee is in possession of the land, or in receipt of rent ;
- (2) if the mortgage is in form (a) or form (b), then at the end of such period of possession the mortgage-debt shall be extinguished ;
- (3) the mortgagor may redeem his land at any time during the currency of the mortgage, on payment of the mortgage-debt, or, in the case of a mortgage in form (a) or form (b), of such proportion of the mortgage-debt as the Collector determines to be equitable ; and

14. *Ram Sahai v. Debi Din*, 54 A 482 = 1932 A 614.
 15. *Palami v. Salambara*, 9 M 267.
 16. *Ibid.*
 17. *Kalka Prasad v. Raja Ram*, 41 A 294.

18. *Prag Narain v. Jwala Prasad* 45 A 450 = 1923 A 458.
 19. *Brinda Ban Seth v. Chokhey Lal*, 1936 R D 352. For other cases on the powers of the Collector see 45 A 450 and *Sampat Bharti v. Hanuman Prasad*, 1935 R D 455.

(4) in the case of a usufructuary mortgage the mortgagor shall not be deemed to bind himself personally to repay the mortgage money.

8. Conditions in permitted mortgages.—(1) In a mortgage made under Section 6 the following conditions may be added by agreement between the parties :

- (a) a condition fixing the time of the agricultural year at which a mortgagor redeeming his land may resume possession thereof;
- (b) conditions limiting the right of a mortgagor or mortgagee in possession to cut, sell, or mortgage trees, or to do any act affecting the permanent value of the land ; and
- (c) any condition which the [State Government] by general or special order may declare to be admissible.

(2) In mortgages made under Section 6 any condition not permitted by or under this Act shall be null and void.

9. Power to revise mortgage made in form not permitted and mortgages by conditional sale.—(1) If after the commencement of this Act a member of an agricultural tribe makes a mortgage of his land in any manner or form not permitted by or under this Act, the Collector shall have authority to revise and alter the terms of the mortgage so as to bring it into accordance with such form of mortgage permitted by or under this Act as the mortgagee appears to him to be equitably entitled to claim.

(2) If a member of an agricultural tribe has before the commencement of this Act made a mortgage of his land in which there is a condition intended to operate by way of conditional sale, the Collector shall have authority to put the mortgagee to his election whether he will agree to the said condition being struck out, or to accept, in lieu of the said mortgage, a mortgage in form (a) as provided by Section 6 which shall be made for such period not exceeding the period permitted by the said section and for such sum of money as the Collector considers to be equitable.

(3) If a suit is instituted in any Civil Court on a mortgage to which sub-section (1) applies, or if a suit for the enforcement of a condition intended, to operate by way of conditional sale in a mortgage made before the commencement of this Act, is instituted or is pending at the commencement of the Act, in any Civil Court, against a member of an agricultural tribe, or if an appeal in any such suit is instituted, or is pending at the commencement of this Act, in any Civil Court other than the High Court, the Court shall, if it finds that the mortgage is enforceable or that the mortgagee is entitled to a decree absolute for foreclosure, refer the case to the Collector with a view to the exercise of the power conferred by sub sections (1) and (2) respectively.

Scope:—This section contains no limitation to the effect that no reference can be made after a decree has been made absolute. On a reference made to the Collector, he can exercise the powers conferred under sub-sections (1) and (2) at any stage i. e. either before a decree has been passed or made absolute²⁰. Application for proceedings under the Act after passing of the final decree can be entertained for which the Civil Courts have jurisdiction under the sub-section²¹.

20. *Bishnath Singh v. Badeo Singh*

1925 A 171.

21. *Bishnath Singh v. Basdeo Singh*,

Letter Patent appeal of above.

1926 A 136=48 A 67; See also

Ram Sahai Singh v. Debi Dua, 49

A 8; *Kalika Prasad v. Ajodhia*

Prasad, 51 A 780.

A simple mortgage between members of the same tribe did not fall under Section 9 (1).

Reference.—There is no provision in the Act requiring the Collector to return references. If he cannot take action, the proceedings terminate²². But if he returns the file on the ground that parties were not members of agricultural tribe, Civil Court cannot but continue the proceedings independently of the Act and pass a decree absolute²³. If the Collector strikes out the conditional sale clause, the Civil Court can pass a decree for repayment of the mortgage-debt²⁴.

10. Future mortgage by way of conditional sale not permitted.—In any mortgage of land made after the commencement of this Act any condition which is intended to operate by way of conditional sale shall be null and void.

Scope.—This section applies only to those mortgages, which come within the general scope of the Act²⁵, and applies to all proprietors in Bundelkhand whether members of an agricultural tribe or not²⁶.

11. Leases—(1) Any member of an agricultural tribe may [with the previous sanction of the Collector of the district in which such land is situated] make a lease of the land of which he is proprietor for any term not exceeding twenty years, and any lease of such land made by a member of an agricultural tribe for a longer term than twenty years shall, if the lessee is not a member of the same tribe [or a member of an agricultural tribe and a resident of] the district in which the land is situated, be deemed to be a lease or form for the term permitted by this section.

(2) Nothing in this section shall be deemed to affect the provisions of Section 49 of the Agra Tenancy Act, 1901.

Legislative changes.—The words in brackets between the words 'may' and 'make' were added by Section 4 of U. P. Act XVIII of 1934. The words in brackets between the words 'tribe' and 'the' were substituted for the words 'and the lessor and lessee are not members of agricultural tribes and both residents' by Section 7 (2) of U. P. Act IV of 1915.

Lease—meaning.—The meaning of the word have been left vague intentionally so as to include both Thikas and leases to tenants²⁷. The section contemplates lease of proprietary rights and not of agricultural land²⁸.

Decree—lease.—Where a person obtains a simple money decree against the assets of a deceased Hindu to whom the Act applies, there is nothing to prevent the Court from executing the decree by granting lease in accordance with the terms in Section 11 in lieu of sale of the property²⁹.

12. Restriction on power to make further temporary alienation.—(1) During the currency of a mortgage made under Section 6 in form (a) or form (b) or of a lease under this Act, the owner shall be at liberty to make a further temporary alienation of the same land for such terms as together with the term of the current mortgage or lease, will make up a term not exceeding the full term of twenty years.

(2) Any such further temporary alienation, if made for a longer term than is permitted by this section, shall be deemed to be a temporary alienation for the term permitted by this section.

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| 22. <i>Ram Sahai v. Debi Din</i> 1932 A 614=54 A 482. | 1929 A 421. |
| 23. <i>Gobind Rao v. Kamta Prasad</i> , 36 A 375=12 A L J 503. | 1935 R D 322. |
| 24. <i>Ishri Prasad v. Baij Nath</i> , 3 A L J 743. See also <i>Gobind Rao v. Kamta Prasad</i> , 12 A L J 503 | 27. <i>Ram Dayal v. Nepal Singh</i> , 1935 RD 242. |
| 25. <i>Kalika Prasad v. Ajudhia Prasad</i> , | 28. 1935 A W R 594. |
| | 29. <i>Maghli Dulayya v. Munna Lal</i> , 1932 A 571. |

Analogous Law.—See Section 19 of the U. P. Regulation of Agricultural Credit Act.

13. Ejection of mortgagee, or lessee, remaining in possession after term.—If a mortgagee or lessee, holding possession under a mortgage made under Section 6 or under a lease made under Section 11 or under a mortgage or lease made under Section 12 remains in possession after the expiry of the term for which he is entitled to hold under his mortgage or lease, the Collector may, of his own motion or on the application of the person entitled to possession, eject such mortgagee or lessee, and place the person so entitled in possession.

Analogous Law.—See Section 22 of the U. P. Regulation of Agricultural Credit Act.

GENERAL PROVISIONS

14. Effect of permanent alienation made without sanction.—Any permanent alienation which under Section 3 is not to take effect as such until the sanction of a Collector is given thereto shall until such sanction is given or if such sanction has been refused, take effect as a usufructuary mortgage in form (a) permitted by Section 6 for such term not exceeding twenty years and on such conditions as the Collector considers to be reasonable.

Analogous Law.—See Section 25 of the U. P. Regulation of Agricultural Credit Act.

Court-Fee.—Appeal.—Collector's refusal is a decree, but as the value of the relief claimed cannot be determined, the appeals would fall under Art. 17 (vi) of Schedule II, Court Fees Act.³⁰

15. Sanction of Collector required to certain alienations of, or charges on, produce of land.—Every agreement whereby a member of an agricultural tribe purports to alienate or charge the produce of his land or any part of, or share in, such produce for more than one year shall not take effect for more than one year from the date of the agreement unless the sanction of a Collector is given thereto, and shall, until such sanction is given or if such sanction is refused take effect as if it had been made for one year.

16. Execution sale of land forbidden.—(1) No land belonging to a member of an agricultural tribe shall be sold in execution of any decree or order of any Civil or Revenue Court, made after the commencement of this Act :

[Provided that if a member of an agricultural tribe has mortgaged or mortgages his land to a member of the same agricultural tribe or to a member of an agricultural tribe who resides in the district in which the said land is situated, and the mortgagee has obtained or obtains a decree for sale, the decree may be executed by sale of the said land to a member of the agricultural tribe to which the mortgagor belongs or to a member of an agricultural tribe who resides in the district in which the said land is situated, but not otherwise]

(2) When a valuation of proprietary rights in land has been made under Section 20, sub-section (2) of the Bundelkhand Encumbered Estates Act, 1903, and the Commissioner has passed an order staying further proceedings under Section 21, clause (f) of the said Act, the provisions of the preceding sub-section shall not be held to prevent the sale of such land in execution of a decree or order relating to a claim contained in the written statement prescribed by Section 9 of the said Act.

30. *Shambhu Nath v. Har Prasad*, 1941 O A (Sup) 612.

(3) Nothing in this section shall affect sales ordered under the provisions of the Bundelkhand Encumbered Estates Act, 1903, or the right of Government to recover arrears of land revenue, or any dues which are recoverable as arrears of land revenue, in any manner permitted by law.

Legislative changes—The proviso to sub-section (4) of Section 16 was added by Section 2 of U. P. Act VII of 1929.

Scope—The section exempts from sale in execution of any decree of a civil or revenue court land belonging to a member of an agricultural tribe³¹. It is retrospective in its effect and applies to mortgages made before or after the commencement of the Act³², (excepting amendment of 1924); and bars the remedy by sale in execution of a simple mortgage being applicable to agriculturists and to non-agriculturists alike who are mortgagees on a simple mortgage³³ but has no effect on mortgages between members of the same tribe³⁴.

Insolvency—Effect—The property of a member of an agricultural tribe does not vest in the Receiver if he is declared an insolvent in as much as Section 16 (2) (a) of the Provincial Insolvency Act forbids the vestment in the Receiver of property exempted from liability to attachment by virtue of any law for the time being in force as by section 16 of this Act³⁵.

Lease, if permissible—As debtor could give a lease in accordance with the terms of section 11 of the Act there was no reason why the decree should not be executed by the giving of such a lease³⁶. This was, however, overruled in *Raghvati Singh v. Kashi Narain*³⁷.

Trees—The prohibition contained in the Section does not extend to trees, and a decree-holder can sell trees appertaining or belonging to the groves held by the grove-holder judgment-debtor³⁸.

[16A. Pre-emption.—(1) Without the previous sanction of the Collector no person shall institute a suit or take any other proceeding in any Court to enforce a right of pre-emption in respect of any land unless ..

- (a) the transferor is not a member of an agricultural tribe ; or
- (b) the person instituting the suit or taking the proceeding is either a member of the same agricultural tribe as the transferor or is a member of an agricultural tribe and a resident of the district in which the land is situated.

(2) The Collector shall enquire into the circumstances of the case and shall have discretion to grant or refuse, by an order in writing, the sanction required by sub-section (1).]

Legislative changes—Section 16-A was added by Section 8 of U. P. Act IV of 1915.

Scope—This section recognises a very valuable right in a non-agriculturist, namely the right, provided the sanction of the Collector is obtained, to institute a suit for pre-emption³⁹.

Sanction—Effect—The right of pre-emption is something far wider than the right of purchase. If the Collector grants to a non agriculturist permission to institute a suit for pre-emption, it must be taken that he has no objection to that person as a purchaser. By implication, therefore, he grants his permission to purchaser⁴⁰.

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| 31. <i>Girwar Dayal v. Narain Singh</i> , 1928 A 211; (1936) 3 A W R 695.
<i>See also</i> 18 A L J 59. | <i>Harakh Narayan</i> , 42 A 149=18 A L J 59. |
| 32. <i>Kalika Prasad v. Ajudhia Prasad</i> , 1929 A 421=51 A 780, 1932 A L J 584. | 36. <i>Malyli Dullaya v. Munna Lal</i> , 1932 A 571. |
| 33. <i>Ranchoore v. Basavidhar</i> , 1930 A L J 1558=53 A 137. | 37. 1938 A 290 (F B). |
| 34. 51 A 780=1929 A L J 448. But see 49 A 8=24 A L J 945. | 38. <i>Panchaiti Akhara v. Beni Bahadur Singh</i> 1925 A 587. |
| 35. <i>Hanuman Prasad Narain v. </i> | 39. <i>Mahammad Zaman Khan v. Bahadur Singh</i> , 1940 A 371=1940 A L J 431. |
| | 40. <i>Ibid.</i> |

It does not, however, create a substantive right but is applicable only where previous right of pre-emption exists.⁴¹

17. Transfer to Collector of decrees on certain mortgages.—When a Civil Court passes a decree against a member of an agricultural tribe on a mortgage made before the commencement of this Act, not being a mortgage with a condition intended to operate by way of conditional sale, and such decree would, but for the provisions of Section 16, be executed by sale of land, the Court shall transfer the execution of the decree to the Collector, who shall offer the decree-holder in full satisfaction of his decree a mortgage in form (a) or form (b) of Section 6 for such period not exceeding twenty years as the Collector considers reasonable.

Scope—This section has no application to a mortgage decree passed before the commencement of the Act.⁴²

Stamp—Mortgage executed by the Collector under this section is not exempt from stamp duty.⁴³

[17A. Execution of rent court decree.]—When in execution of a decree obtained in a suit under Sections 159, 160, 161, 162, 164 or 165 of the Agra Tenancy Act, 1901, a Court would, but for the provisions of Section 16 of this Act, order sale of any land belonging to a member of an agricultural tribe, such Court shall send the decree for execution to the Collector, who shall proceed in the manner prescribed in Section 17.]

Legislative changes:—Section 17-A was added by Section 9 of U.P. Act IV of 1915.

18. Record-of-rights and annual register.—(1) Where, by reason of any transaction which under this Act requires the sanction of a Collector, a person claims to have acquired a right, the acquisition whereof he is bound to report under Section 34 of the [Uttar Pradesh] Land Revenue Act, 1901, such person shall, in making his report, state whether the sanction required has been obtained or not, and his right so acquired shall not be entered in the record-of-rights or in any annual register until he produces such evidence of the order by which such sanction is given as may be required by any rules made under this Act.

(2) No right claimed by reason of any transaction or condition which is declared by this Act to be null and void shall be entered in the record-of-rights or in any annual register.

Deed Void—effect—A mortgage by a conditional sale is illegal and a mortgagor obtaining decree for foreclosure can be refused mutation.⁴⁴

19. Exercise of powers of Collector.—The powers conferred by this Act upon a Collector may be exercised by a Revenue Officer of higher rank, or by any officer authorized by the [State] Government in this behalf.

20. Application of certain provisions of the [Uttar Pradesh] Land Revenue Act, 1901.—Subject to the provisions of this Act, the provisions of Chapters II, IX, and X of the [Uttar Pradesh] Land Revenue Act, 1901, shall, in so far as they are applicable, apply to the proceedings of Revenue Officers under this Act.

41. *Phool Chand v. Ram Nath* 1928 A 186=26 ALJ 142=50 A 430.

42. *Hanuman Praaad Narain v. Harakh Narain*, 42 A 142.

43. *Somwarpuri v. Matabadal*, 38 A 351=14 ALJ 422.

44. 1935 RD 322.

21. Appearance of legal practitioners forbidden.--No legal practitioner shall appear on behalf of any party interested in any proceeding before a Revenue Officer under this Act.

22. Jurisdiction of Civil Courts excluded.—(1) A Civil Court shall not have jurisdiction in any matter which the [State] Government or a Revenue Officer is empowered by this Act to dispose of.

(2) No Civil Court shall take cognizance of the matter in which the [State] Government or any Revenue Officer exercises any power vested in it or in him by or under this Act.

Scope.—This section ousts the jurisdiction of Civil Courts in matters in which the State Government or any Revenue Officer exercises any powers vested in it or in him by or under this Act. This, however, does not mean that if the Collector acts illegally and in excess of his powers, Section 22 will have the effect of ousting the Civil Court's jurisdiction to entertain a suit for a declaration that the acts of the Collector were *ultra vires*.⁴⁵

[23. Exemption]—The [State] Government may, by notification in the [official *Gazette*]-

- (a) exempt any district or part of a district from this Act to such extent as it thinks fit, and
- (b) exclude any person or class of persons, from the operation of any notification made under Section 4 of the Act declaring any body of persons to be deemed to be an agricultural tribe.]

Legislative changes:—Section 23 was added by Section 10 of U. P. Act I of 1904.

Exemption—See Notification No. 1978/1-729 F, dated June 20, 1903 in the U. P. *Gazette*, 1903 Part I p. 49, which exempts certain areas of Banda, Jhansi and Jalaun districts from the operation of certain sections.

24. Power to make rules.—(1) The [State] Government may make rules for carrying into effect the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, the [State] Government may make rules prescribing the Revenue Officers to whom applications, may be made, and the manner and form in which such applications shall be made and disposed of.

Rules made under the Bundelkhand Alienation of Land Act, 1903

(Published in U. P. *Gazette*, dated December 11, 1915, under notification No. 2451/1-568, dated December 6, 1915.)

A. Rules Regarding Mutation

1.—Any application for the exercise by the Collector of powers conferred upon him by the Act relating to a transfer which is the subject of mutation proceedings shall be disposed of in the course of those proceedings, and, if such application is made to the Tahsildar in a case pending before him, he shall, after making such enquiry as may be necessary, submit the mutation proceedings and the application to the Collector, together with such report as the circumstances may require.

45. *Prag Narain v. Jwala Prasad* 1923 A 458=45 A250=47A L J 335,

2.—When the Tahsildar makes an inquiry into a transfer by a member of an agricultural tribe under Section 35 of the North-Western Provinces and Oudh Law Revenue Act and the parties are not members of the same agricultural tribe or are not members of agricultural tribes and both residents of the district in which the land is situated, he shall, on the date fixed for hearing objections by Rule 13 of Book's circular 20—II, first ascertain all such particulars including, in the case of mortgage or lease, the existence of previous mortgages or leases, if any as may be necessary for the decision of the question whether the transfer is made otherwise than in accordance with the provisions of the Bundelkhand Alienation of Land Act, 1903 as amended by Bundelkhand Alienation of the Land (Amendment) Act, 1905, or involves any conditions contrary to those provisions, and shall record a finding on the question after hearing the parties and making a note of their representations.

3.—If the transfer is a temporary alienation and is contrary to the provisions of the Act, the Tahsildar shall :—

- (a) if any application has been made for revision of the terms of the transfer, dispose of the case in accordance with the orders passed by the Collector on the application.
- (b) if no such application has been made for revision of the terms of the transfer, dispose of the case in accordance with the orders passed by the Collector on the application.

4.—If the transfer is a permanent alienation and requires the sanction of the Collector under Section 3 (2) of the Act, the Tahsildar shall stay further proceedings, and transmit the mutation case with his recommendation as to whether the sanction should be granted or refused, to the Collector for his orders.

5.—The transmission of the mutation proceedings to the Collector under Rule 4 shall be deemed to be an application to the Collector, to exercise the power conferred on him by Section 3 of the Act. No separate application is required for the exercise of those powers in the same case and no stamp-duty need be levied.

6.—The Collector shall record his order, sanctioning or refusing to sanction the alienation on the mutation proceedings transmitted to him under Rule 4. If he refuses to sanction the permanent alienation, he shall pass orders under Section 14. The proceedings shall then be returned to the Tahsildar.

If the Collector has sanctioned the permanent alienation, his order recorded on the mutation proceedings shall be deemed to be sufficient evidence of the sanction for the purposes of Section 18 of the Act, and the Tahsildar shall proceed with the case in accordance with the rules of the mutation circular.

7.—If the Collector refuses to sanction the permanent alienation, the Tahsildar shall pass such orders in the case as may be in accordance with the order of the Collector refusing sanction.

8—Nothing in these rules shall be so construed as to disallow applications to the Collector for the exercise of any power conferred upon him by the Bundelkhand Alienation of Land Act, 1903, as

amended by the Bundelkhand Alienation of Land Act, 1915, which are made in any other manner authorised by law or by rules having the force of law.

B. Rules Regarding Applications Under the Act

9.—An application to the Collector for the exercise of any power conferred on him by Alienation of Land Act shall be in writing signed and verified by or on behalf of person making it and shall be accompanied by an extract from the annual record or record-of-rights sufficiently describing the land which is the subject of the application. The application shall bear a stamp of the value of 8 as. and the extracts from the revenue-records shall also be duly stamped in accordance with Section 6 and Schedule I No. IX of the Court Fees Act (VII of 1870.)

10.—Such an application may be received by the Collector or any Assistant Collector of the 1st or 2nd class.

11.—If the application is made to an Assistant Collector but is not made in connection with mutation case, the Assistant Collector shall, if generally or specially empowered in this behalf by an order in writing made by the Collector, inquire into the case and transmit the application with a report of the results of his inquiry to the Collector for order. The Assistant Collector, if so empowered, shall transmit the application to the Collector for orders without remark.

C. Rules of Procedure for Collectors

12.—When a Collector receives mutation proceedings under Rule 4, an application under Rules 9-11 or a reference from a Civil Court ; he may either decide the case of the proceedings, application or reference received, or, after further inquiry which he considers necessary or he may send the case to any Revenue Officer subordinate to him for investigation and may decide the case upon the results of his enquiry, as the case may be.

13.—When a case has been transferred under Section 9 (3) or Section 17 of the Act and an appeal is pending against the decision of the Court which transferred the case, the Collector shall stay further action until the appeal has been decided. If no appeal has been preferred, he may on the application of either party, adjourn the proceedings for such time as he may consider reasonable in order to allow such party to institute an appeal.

14.—In determining whether to grant or refuse sanction under Section 3, the Collector shall be guided by the following instructions :—

- (1) Sanction should not be given unless the Collector is satisfied :—
 - (a) that the transfer is *bona fide* between the parties and is not made for the purpose of evading the Act.
 - (b) that no member of the agricultural tribe to whom the transfer might in accordance with the Act be made, has offered, or is ready to offer, a fair price for the land.
- (2) An alienation to a money-lender, whether the money-lender is a landholder or not, shall only be sanctioned when it is clear that sanction may be given consistently with the object of the Act and that there would be hardship in refusing it.

(3) If the alienor depends merely or entirely on his land, no alienation should ordinarily be sanctioned which would leave him less land than is required for the support of himself and his family.

15.—Subject to the provisions of the preceding rules sanction may be given to the alienation of land,

- (a) for building purposes near towns or village sites;
- (b) by large land-owners for commercial reasons, or to improve and consolidate their properties;
- (c) by mortgagors desiring to sell a part of their land in order to redeem the mortgages on the whole or part of the remainder;
- (d) in favour of the landholders belonging to the agricultural classes, who, by reason of their insignificant numbers have not been classed as members of agricultural tribes;
- (e) to fellow-caste-men of the alienor, holding land in the districts of the [Uttar Pradesh] adjoining Bundelkhand, the parganas of the Dudhi, Bijaigarh, Aghori and Singrauli in the Mirzapur district or, trans-Jamuna portion of the Etawah District;
- (f) to any member of an agricultural tribe in Bundelkhand, the parganas of the Dudhi, Bijaigarh, and Singrauli in the Mirzapur District or trans-Jamuna portion of the Etawah District.

16.—The alienation of self-acquired property may be sanctioned more readily than that of ancestral land.

THE BUNDELKHAND ENCUMBERED ESTATES ACT, 1903

[UTTAR PRADESH] ACT No. I OF 1903

As modified and adopted upto Act III of 1922

CONTENTS

Sections	
	CHAPTER I PRELIMINARY
1. Short title, extent and commencement.	
2. Definitions.	
2A. Applicability of provisions of Act referring to proprietors to persons in Mirzapur having heritable and transferable rights.	
3. Application of Act.	
	CHAPTER II APPOINTMENT OF OFFICERS
4. Appointment and removal of Special Judge.	
- Exercise of powers of Commissioner.	
	CHAPTER III THE APPLICATION AND PRELIMINARY INQUIRY
6. Application for benefit of Act.	

Sections	
	Power to extend time for making applications.
7. Order to inquire.	
8. Written statement to be submitted.	
	Verification of statement.
	CHAPTER IV PROOF OF DEBTS AND PROCEDURE OF SPECIAL JUDGE
9. Publication of notice to claimants against proprietor.	
	Copies of notice to be exhibited.
	Provisions for admission of claims within further period of two months.
10. Consequences of notice.	
11. Claim to contain full particulars.	
Documents to be given up.	
Entries in books.	
Exclusion of documents not produced.	

12. Claim not duly notified to be deemed discharged.
13. Order appointing time for inquiry.
History of transaction with proprietor to be investigated.
14. Mode of taking account.
15. Interest to be allowed.
16. Proceedings when amount determined to be due is paid into Court.
17. Power to rank debts and fix future interest.
18. Power to eject mortgagee etc.
19. Report to be submitted by Special Judge in certain cases.

CHAPTER V

PROCEDURE OF COMMISSIONER AND MODE OF LIQUIDATION

20. On report of Special Judge, Commissioner to sell property reported by Special Judge, and, if necessary, to direct valuation of proprietary rights
“Annual profits”.
21. Proceedings in liquidation.
22. Consequences of orders staying further proceedings.
23. Attachment of proprietary rights.
24. Mode of selling proprietary rights.
25. Duty of Collector.
26. Consequences of loan.

(Received the assent of the Lieutenant-Governor on the 2nd May, 1903, and of the Governor-General on the 29th May, 1903, and was published under Section 44 of the Indian Councils Act, 1861, on the 13th June, 1903).

An Act to consolidate and amend the law providing for the relief of Estates in Bundelkhand.

Whereas it is expedient to consolidate and amend the law providing for the relief of Encumbered Estates in Bundelkhand and certain other parts of the [Uttar Pradesh] and to extend its scope;

It is hereby enacted as follows :

Legislative changes.—The words in brackets were substituted for the words “in that part of the U. P. known as Bundelkhand” by Section 2 of U. P. Act V of 1915, read with A. O. 1950.

Prefatory Note.—The following extract from the Statement of Objects and Reasons may be usefully noticed :

“For some years past the question of the indebtedness of landholders in Bundelkhand has engaged the attention of the Government. Notwithstanding the relief afforded in the District of Jhansi by the acts taken between the years 1882 and 1887 under Act XVI of 1882, the special inquiries that have been instituted show that the debts of the landholders have again risen in that district to a large sum, and that in the districts of Jalaun, Landa and Hamirpur the indebtedness is most serious. The approaching revision of settlement in the Jalaun district on a new system affords a suitable opportunity for applying the provisions of the Jhansi Encumbered Estates Act, 1882, to that tract. In other districts of Bundelkhand, in which tract of the three sub-divisions of the Allahabad district situated south of the river Jumna are included, steps have been taken to re-adjust the revenue demand, where necessary by summary revisions; and it may be advisable that, before introducing a reduced demand opportunity should be given to indebted proprietors in parts of Bundelkhand other than Jalaun to take advantage of the provisions of the law enacted for the benefit of such persons in 1882. The experience of the working of Act XVI of 1882 gained in past years

27. Conditions of purchase by Government.
28. Power to declare that proprietor has ceased to be subject to disabilities.
29. Private debts incurred during period of disability.

CHAPTER VI

APPEAL AND REVISION

30. Appeals.
31. Power to call for proceedings and pass orders thereon.

CHAPTER VI:

MISCELLANEOUS

32. Death of proprietor during proceedings.
33. Investigation to be deemed a judicial proceeding. Special Judge deemed public servant within the meaning of Indian Penal Code.
34. Power to summon witnesses, compel production of documents, and award costs.
35. Bar of suits.
36. Power to make rules.
37. Rules.

THE FIRST SCHEDULE

FORMS OF MORTGAGE

THE SECOND SCHEDULE

ENACTMENT REPEALED

RULES

shows that there are certain defects in the Act which require to be remedied, and that improvement in some respects is possible. It is accordingly proposed to repeal the Act, and to replace it by a measure framed on the same principles but more extended in scope, and with certain additional provisions the more important of which are contained in clauses 10 (c) (1), 14 (c), 20 (2), 21, and 28 of the Bill."—*Vide U. P. Gazette*, 1903, part V p. 2.

For Report of the Select Committee, see *U. P. Gazette*, 1903, p. 83, and for Proceedings in Council, see *U. P. Gazette*, 1903, pp. 53, 128 and 160.

CHAPTER I PRELIMINARY

1. Short title, extent and commencement.—(1) This Act may be called the Bundelkhand Encumbered Estates Act, 1903.

[(2) It extends to the districts of Banda, Hamirpur, Jhansi, and Jalaun, to the Meja, Bara, and Karchana sub-divisions of the Allahabad district, to the parganas of Dudhi, Bijaigarh, Aghori, and Singrauli in the Mirzapur district, and to the trans-Jamuna portion of the Etawah district; and],

(3) It shall come into force in any of the areas specified in sub-section (2) on such day as may be specified in that behalf in a notification issued under Section 3.

Legislative changes.—Sub-Section (2) was substituted by Section 3 of *U. P. Act V of 1915*.

For Notification—See Note under Section 3.

2. Definitions.—In this Act, unless there is anything repugnant in the subject or context,—

(a) "private debt" means any debt or liability other than a public debt;

(b) "public debt" means a debt due or liability incurred to the [Government].

(c) "mahal" and "sir" have the same meaning as in Section 4, sub-sections (4) and (12) respectively, of the [Uttar Pradesh] Land Revenue Act, 1901; and

(d) "proprietor" means a proprietor of a mahal or of a share of a mahal, and includes an ubaridar and an inferior proprietor.

Legislative changes.—The words [Uttar Pradesh] and [Government] were substituted for the words [United Provinces] and [Crown] by A. O. 1950 throughout the Act.

[2-A. Applicability of provisions of Act referring to proprietors to persons in Mirzapur having heritable and transferable rights.]—(1) In the portions of the Mirzapur district to which this Act applies, the provisions thereof applicable to proprietors shall also apply to permanent tenure-holders, fixed-rate tenants, and all other persons having rights in land which are both heritable and transferable to the same extent as a proprietary right.

(2) In this Act, except in clause (b) of Section 27, all expressions referring to proprietary rights shall, for the purpose of giving effect to sub-section (1), be construed to refer also to the rights of a permanent tenure-holder and fixed-rate tenant and to all other rights in land which are both heritable and transferable to the same extent as a proprietary right.]

Legislative changes.—Section 2-A was added by Section 4 of the U. P. Act V of 1915.

3. Application of Act.—The [State Government] may, by notification in the official *Gazette*, apply this Act to any district or part of a district specified in sub-section (2) of Section 1.

Legislative changes.—The words 'State Government' and 'official *Gazette*' were substituted for the words 'Provincial Government' and '*Gazette*' by A. O. 1937, read with A. O. 1950, throughout the Act.

Note.—(1) The Act was applied to Meja, Bara and Karchana sub-divisions of the Allahabad district and Banda, Hamirpur, Jhansi and Salauli districts by Not. no. 1969-I—768 F., d. June 20, 1903, published in *Gazette*, 1903, Part 1, p. 388, and to the trans-Jumna portion of the Etawah district and parganas Aghori, Bijaigarh, Budhi and Singrauli of the Mirzapur district, by Not. No. 2457/I—568, d. December, 6, 1915; published in *Gazette*, 1915, Part 1, p. 2426.

(2) The Act stands repealed where the provisions of U. P. Zamindari Abolition and Land Reforms Act, 1950 (U. P. Act I of 1951) have been applied vide Section 67 of U. P. Act XVI of 1953.

CHAPTER II

APPOINTMENT OF OFFICERS

4. Appointment and removal of Special Judge.—(1) The [State Government] may appoint for any local area to which this Act has been applied a Special Judge, who shall exercise the powers conferred, and perform the duties imposed, on him by this Act.

(2) * * *

Legislative changes.—Sub-section (2) was omitted by A. O. 1937.

5. Exercise of powers of Commissioner.—The powers conferred by this Act upon the Commissioner of the * * * Division may be exercised [in respect of any specified area] by any officer authorized by the [State Government] in this behalf, and all references in this Act to the Commissioner of the * * * Division shall be construed as referring to the officer (if any) so authorized.

Legislative changes.—The word [Allahabad] was omitted and the words [in respect of any specified area] were inserted by Sections 5 & 6 of Act V of 1915.

Note.—See Not. no. 1970/I—768 F., dated June, 20, 1903, in *Gazette* 1903, Part 1, p. 488.

CHAPTER III

THE APPLICATION AND PRELIMINARY INQUIRY

6. Application for benefit of Act.—(1) At any time within six months after the issue of a notification under Section 3, any proprietor owning land in any area covered by the notification may apply in writing, through the Collector, to the Commissioner of the * * * Division, stating that the proprietor is subject to, or that his immovable property or any part thereof is encumbered with, private debts, and requesting that the provisions of this Act be applied to him.

(2) The like application may be made with respect to any such proprietor by an officer authorized generally or specially in this behalf by the [State Government]:

Provided that, when the proprietor is under the superintendence of the Court of Wards, the application shall be made by the manager of his property, and when the proprietor is a disqualified proprietor, within

the meaning of Section 8 of the North-Western Provinces and Oudh Court of Wards Act, 1899, but his property is not under the superintendence of the Court of Wards, the application shall be made by the Collector of the district in which the property is situated.

(3) **Power to extend time for making applications.**—The [State Government] may, by notification in the [Official Gazette], extend the time prescribed for making applications under any sub-section of this section.

Legislative changes—The word 'Allahabad' was omitted from sub-section (1) by Sections 5 & 6 of U. P. Act V of 1915.

Analogous Law.—Section 4 of the U. P. Encumbered Estates Act.

Note.—(1) See Nos. 1971/I—768-F., dated June 20, 1903 and no. 2459/I—568 dated December 6, 1915, in *Gazette*, 1903, Part I, p. 488 and *ibid.*, 1915, Part I, p. 2426, respectively.

(2) See Nos. no. 1972/I—768-F., dated June, 20, 1903 and no. 2463/I—568 dated December 6, 1915, in *Gazette*, 1903, Part I, p. 488, & *ibid.*, 1915, Part I, p. 2436, respectively.

7. Order to inquire.—When any such application is made, the Commissioner may, subject to such rules as the [State Government] may make in this behalf, direct an inquiry to be made by the Special Judge,

- (a) into the nature and amount of the proprietor's private debts, and
- (b) into the sufficiency of his property, whether movable or immovable exclusive of his proprietary rights in land and of the property mentioned in the first proviso to Section 266 of the Code of Civil Procedure to discharge his private debts.

Analogous Law.—Section 6 of the U. P. Encumbered Estates Act.

8. Written statement to be submitted.—(1) When an inquiry has been directed under Section 7, the applicant shall, within a period to be fixed by the Commissioner, submit to the Special Judge a written statement containing, so far as may be practicable,

- (a) full particulars respecting the private debts to which the proprietor is subject, or with which his immovable property or any part thereof is encumbered;
- (b) the nature and value of the proprietor's property (exclusive of his proprietary rights in land and of the property mentioned in the first proviso to Section 266 of the Code of Civil Procedure); and
- (c) the names and residences of his creditors, so far as they are known to, or can be ascertained by, the applicant.

(2) The statement must be verified by the applicant or by some other competent person, in the manner required by law for the verification of plaints; and if it contains any averment which the person making the verification knows or believes to be false, or does not know or believe to be true, he shall be deemed to have intentionally given false evidence within the meaning of the Indian Penal Code:

Provided that, when the application is made by an officer authorized under Section 6, sub-section (2), or by the Collector, it shall not be necessary to verify the statement; but the proprietor shall, so far as may be practicable, within a period to be fixed by the Special Judge,

furnish such information regarding the matters mentioned in clauses (a), (b), and (c) of this section as the Judge may require.

Analogous Law.—Section 8 of the U. P. Encumbered Estates Act.

CHAPTER IV

PROOF OF DEBTS AND PROCEDURE OF SPECIAL JUDGE

9. Publication of notice to claimants against proprietor.—(1) When the statement or information referred to in Section 8 has been submitted or furnished, the Special Judge shall publish in the [official Gazette] a notice in the vernacular language of the district calling upon all persons having claims against the person or the property of the proprietor by or with respect to whom the application was made under Section 6 to present to the Special Judge, within two months from the date of the publication, a written statement of their claims.

(2) **Copies of notice to be exhibited.**—The Special Judge shall also cause copies of the notice to be exhibited at his own office, at the office of the Collector of the district in which the land of the proprietor is situate, and at some conspicuous place in the village where the proprietor resides.

(3) **Provision for admission of claims within further period of two months.**—The statement must be presented within the period specified in the notice, unless the claimant satisfies the Special Judge that he had sufficient cause for not presenting the statement within that period, in which case the Special Judge may receive the statement within a further period of two months from the expiration of the period so specified.

Analogous Law.—Section 9 of the U. P. Encumbered Estates Act.

10. Consequences of notice.—(1) After the publication of the notice, the following consequences shall ensue (namely) :

(a) all proceedings pending at the date of the publication in any Civil or Revenue Court in the [Uttar Pradesh] other than the High Court in respect of any private debt to which the proprietor is subject, or with which his immovable property is encumbered, shall be stayed, all processes, executions, and attachments issued by any such Court, and then in force, in respect of any such debt, shall become null and void, and no fresh process, execution, or attachment shall, except as hereinafter provided, be issued;

(b) in respect of any such debt no fresh suit or other proceeding shall, except as hereinafter provided, be instituted in any Civil or Revenue Court in the [Uttar Pradesh].

(2) Until the Commissioner has declared, as hereinafter provided, that the proprietor has ceased to be subject to the disabilities mentioned in this clause—

(a) the proprietor shall be incompetent to exchange, give, or, without the consent of the Commissioner, sell, mortgage, or lease his proprietary rights in land or any part thereof; and

- b) no suit or other proceeding shall be instituted in any Civil or Revenue Court in the [Uttar Pradesh] against those rights in respect of any private debt contracted by the proprietor after the publication of the notice.

Analogous Law.—Section 7 of the U. P. Encumbered Estates Act.

Non-applicant—Effect.—The mortgagee is entitled to proceed against the share of the mortgagors, who have not obtained the benefit of the Act, for a proportionate share of the debt¹, although the mortgage debt which has been the subject of enquiry by the Special Judge cannot be the subject of a fresh suit².

Give—meaning.—The word “give” in Section 1(2) is wide enough to cover a case of giving away property by way of waqf so far as property lies in the area, to which the Act applies³.

Disability—Effect—After the publication of a notice under this section the proprietor becomes incompetent to exchange, give, or without the consent of the Commissioner sell, mortgage, or lease his proprietary rights in land or any part thereof; even a sale deed executed in terms of an agreement (executed during the period of disability), after the disability has ceased would be void⁴. Where a disabled proprietor executes a bond in favour of a creditor in respect of the amount awarded by the Special Judge, authorising him to recover annually the produce of defendant's share in certain lands, it is void, and as a simple money bond it is equally void as the consideration or object was to defeat the provisions of the law⁵. Even the sale of self-acquired property is invalid⁶.

11. Claim to contain full particulars.—(1) Every claimant referred to in Section 9 shall, in the written statement of his claim, present full particulars thereof, and shall name any property of the proprietor other than his land against which he seeks execution.

(2) **Documents to be given up.**—Every document on which the claimant founds his claim, or on which he relies in support thereof, shall be delivered to the Special Judge along with the written statement.

(3) **Entries in books.**—If the document is an entry in any book, the claimant shall produce the book to the Special Judge, together with a copy of the entry on which he relies. The Special Judge shall mark the book for the purpose of identification, and, after examining and comparing the copy with the original, shall return the book to the claimant.

(4) **Exclusion of documents not produced.**—If the document in the possession or under the control of the claimant is not delivered or produced by him as required by this section, the Special Judge may refuse to receive that document in evidence on the claimant's behalf at the investigation of the case.

Analogous Law.—Section 10 of the U. P. Encumbered Estates Act.

12. Claim not duly notified to be deemed discharged.—Every claim against the proprietor in respect of a private debt shall, unless made within the time and in the manner required by this Act, be deemed, for all purposes and on all occasions, to have been duly discharged.

Analogous Law.—Section 13 of the U. P. Encumbered Estates Act.

Discharge—Effect.—The debt of the applicant only is discharged. If there are several co-mortgagors and only some of them apply and the provisions of the

1. *Pohkar Singh v. Ram Dih*, 10 ALJ 17, relying on 20 A 141.
2. 6 I C 164.
3. *Mst. Musharraf Begam v. Mst. Sikandur Jehan Begam*, 1928 A

516=51 A 40.
4. *Gaya Prasad v. Durga Singh*, 1928 A 112=25 A L J 1065.
5. 1921 A 400=19 A L J 645.
6. 14 R D 281.

Act are applied to them, it is only the claim against the proprietors who have applied that is duly discharged, and not also the claim against those who have not applied. But the mortgagee also cannot claim the whole of the debt from those who have not applied on the ground that they were jointly liable for the whole. The legal effect of the proceedings is that the integrity of the mortgage must be deemed to have been broken up by operation of law.⁷ After discharge of debt mortgagor is entitled to recover the mortgaged property from the mortgagee.⁸

Validity.—Where the person who was acting for plaintiff (a minor) as his next friend was also acting in the same proceeding as the agent of the opposite parties, the proceedings must be regarded as not regularly taken.⁹

13. Order appointing time for inquiry.—(1) The Special Judge shall, by an order in writing, appoint a time for inquiring into each claim made as aforesaid; and a copy of that order shall be served on the claimant and on the proprietor, or when the application has been made on behalf of a proprietor whose property is under the superintendence of the Court of Wards or a disqualified proprietor, whose property is not under superintendence, on the manager of his property, or the Collector, as the case may be.

(2) History of transactions with proprietor to be investigated.—At the time so appointed, or at any subsequent time to which the proceedings may be adjourned, the Special Judge shall hear such of the parties as appear, and if the amount of any claim (other than a claim decreed by a competent Court) is disputed shall inquire into the history and merits of that claim from the commencement of the transactions between the parties, and shall, as hereinafter provided, determine the amount (if any) justly due to the claimant.

Explanation.—Subject to the right of appeal and power of revision hereinafter conferred, the effect of this determination is to extinguish the previously existing right (if any) of the claimant, together with all rights (if any) of mortgage or lien by which the same is secured, and, where any amount is determined to be due to him, to substitute for those rights a right to recover that amount in the manner and to the extent hereinafter prescribed, and not otherwise.

Note.—A transaction in contravention of the section is void and cannot be enforced.¹⁰

14. Mode of taking account.—When the Special Judge inquires, under Section 13, into the history and merits of a claim, he shall, notwithstanding any agreement between the proprietor and the claimant, or the persons (if any) through whom they claim, as to allowing compound interest, or as to setting off the profits of mortgaged property in lieu of interest without an account, or otherwise determining the manner of taking the account, and, notwithstanding any statement or settlement of account, or any contract purporting to close previous dealings and create a new obligation, open the account from the commencement of the transactions between the parties, and take that account according to the following rules (that is to say):

- (a) separate accounts of principal and interest shall be taken;
- (b) in the account of principal there shall be debited to the proprietor such money as may, from time to time, have been actually received by him, or on his account, from the

7. *Mst. Beti Bai v. Tantya Singh*, 1926 A 136=9 I C 574.

8. *Baiji Nath v. Dulare*, 39 I C 582 (A).

9. *Chhidu v. Desraj*, 1921 A 294.

10. *Bishenlal v. Phary, Jn*, 19 A I.J. 465=1921 A 496=63 I C 542.

- claimant and the price of goods (if any) sold to him by the claimant as part of the transactions between them;
- (c) in the account of principal there shall not be debited to the proprietor any money which he may have agreed to pay in contravention of Section 257-A of the Code of Civil Procedure;
 - (d) in the account of principal there shall not be debited to the proprietor any accumulated interest which has been converted into principal at any statement or settlement of account, or by any contract made in the course of the transactions, unless the Special Judge, for reasons to be recorded by him in writing, deems such debit to be reasonable;
 - (e) in the account of interest there shall be debited to the proprietor simple interest on the balance of principal for the time being outstanding at the rate allowed by the Special Judge as hereinafter provided:

Provided that, if the claimant does not produce accounts, the Special Judge may, in his discretion, refuse to debit interest on a balance claimed;

- (f) all money paid by, or on account of, the proprietor to the claimant, or on his account, and all profits, services, or other advantages of every description received by the claimant in the course of the transactions, shall be credited first in the account of interest, and when any payment is more than sufficient to discharge the balance of interest due at the time it is made, the residue of that payment shall be credited to the proprietor in the account of principal:

Explanation.—The advantages mentioned in this clause shall be estimated, if necessary, at such money value as the Special Judge may determine in his discretion, or with the aid of arbitrators appointed by him;

- (g) the accounts of principal and interest shall be made up to the date of making the claim; and the aggregate of the balances (if any) appearing due on both the accounts against the proprietor at that date shall be deemed to be the amount due at that date, except when the balance appearing due on the account of interest, exceeds that appearing due on the account of principal, in which case double the latter balance shall be deemed to be the amount then due.

Analogous Law.—Section 14 of the U. P. Encumbered Estates Act.

15. Interest to be allowed.—The interest to be awarded in taking an account, according to the rules set forth in Section 14, shall be—

- (a) the rate (if any) agreed upon between the proprietor and the claimant or the persons (if any) through whom they respectively claim, unless that rate is deemed by the Special Judge to be unreasonable; or
- (b) if that rate is deemed by the Special Judge unreasonable or if no rate was agreed upon, or, if any agreement to set off profits in lieu of interest without an account, entered

into between the proprietor and the claimant or the persons (if any) through whom they respectively claim, has been set aside by the Special Judge, such rate as the Special Judge deems reasonable.

16. Proceedings when amount determined to be due is paid into Court.—If, on the termination of the inquiries by the Special Judge, the proprietor forthwith pays into Court the aggregate amount of the claims determined to be due, together with the aggregate of such costs (if any) as the Special Judge may in each case award against the proprietor, the Special Judge shall submit a report of his proceedings to the Commissioner, and shall, on the application of each claimant, pay to him such portions (if any) of the said aggregate amounts as may be due to him.

17. Power to rank debts and fix future interest.—If the proprietor does not pay the said amounts under Section 15 and these amounts cannot, in the opinion of the Special Judge, be paid from the proceeds of the sale of the proprietor's property (exclusive of his proprietary rights in land and of the property mentioned in the first proviso to Section 266 of the Code of Civil Procedure), the Special Judge shall make an order ranking the claims and costs according to the order in which they shall be paid or discharged, and fixing the interest (if any) to be paid on the amounts thereof respectively from the date of the final decision thereon to the date of the payment or discharge thereof.

18. Power to eject mortgagee, etc.—(1) When any person whose claim has been determined by the Special Judge, or whose claim is, under Section 12, to be deemed to be discharged, has, as mortgagee or otherwise, obtained possession of any land of the proprietor as security for his claim, and continues in possession of that land, the Special Judge may order him to be ejected therefrom.

(2) Any order passed under this section shall be executed as nearly as may be in accordance with the provisions of Section 263 and Section 264 of the Code of Civil Procedure.

Scope.—This section provides a summary remedy, but it does not bar the mortgagor from resorting to Civil Courts to recover his property ¹¹.

19. Report to be submitted by Special Judge in certain cases.—When the proceedings hereinbefore prescribed have been concluded otherwise than under Section 16, the Special Judge shall submit a report to the Commissioner, showing the nature and amount of the claims and costs as determined and awarded by him, the nature and amount of all the proprietor's property (exclusive of his proprietary rights in land and of the property mentioned in the first proviso to Section 266 of the Code of Civil Procedure) which may be available for the payment or discharge of the same, and, when an order has been made under Section 17, the particulars of such order.

CHAPTER V

PROCEDURE OF COMMISSIONER AND MODE OF LIQUIDATION

20. On report of Special Judge, Commissioner to sell property reported by Special Judge, and if necessary, to direct valuation of

11. *Baij Nath v. Dulare*, 39 I C 582 (A); *Met. Beti Bai v. Tantya Singh*, 1926 A 136.

proprietary rights—(1) On receiving a report under Section 19, the Commissioner shall direct that the property reported by the Special Judge as available for the payment or discharge of the claims and costs determined and awarded by him or any specified portion of that property, be sold by public auction; and from the proceeds thereof shall pay or discharge, so far as practicable, the amount of the said claims and costs.

(2) If those proceeds are not sufficient to pay or discharge in full that amount, the Commissioner shall direct the value of the proprietor's proprietary rights in land to be ascertained at such multiple of the annual profits as may be fixed by the [State Government]:

Provided that the value shall not be estimated at less than six times the annual profits for the purposes of a loan, and at less than ten times such profits for the purposes of purchase by the [State Government].

Explanation.—“Annual Profits”.—The expression “annual profits” means the balance left, after deducting the amount of the annual Government revenue, if any, and the rates payable annually by the proprietor under the [Uttar Pradesh] Local Rates Act, 1914, or any other Act for the time being in force, from the aggregate amount of—

- (a) the rents which he is entitled to receive annually from his tenants;
- (b) the rent which he would have to pay annually for his *sir* and other land belonging to him in his own cultivation (if any), if he were an exproprietary tenant thereof;
- (c) all other profits annually receivable by him as proprietor; and
- (d) in the case of occasionally receivable or varying in amount from year to year the average annual amount of such profits during the ten years next preceding the valuation.

21. Proceedings in liquidation.—When the value of the proprietor's proprietary rights has been ascertained as directed in Section 20, the Commissioner shall proceed as follows :

- (a) if the sum at which the rights have been valued for the purposes of a loan is sufficient to pay or discharge the unpaid balance of the claims and costs determined and awarded by the Special Judge, together with the proprietor's public debts, the Commissioner may, with the consent of the proprietor, direct such sum as may be necessary, not being more than the amount of such valuation, to be advanced from the public treasury as a loan to the proprietor repayable with interest thereon at [such rate as the [State Government] may, from time to time fix, and which may not exceed by more than two per centum per annum] the rate of interest fixed by the [Union Government] on advances made to the [State Government] by instalments, within a term not exceeding fifteen years, and shall, from the sum so advanced, pay or discharge in full the said balance and the said public debts;
- (b) if the sum at which the rights have been valued for the purposes of a loan is not sufficient to pay or discharge

the said balance and public debts, the Commissioner may, with the consent of the proprietor, pay or discharge in full the said balance and public debts partly by sale of a portion in the manner aforesaid, and partly by sale of a portion of the proprietary rights in the manner herein-after prescribed if thereby a substantial portion of the rights can be saved.

- (c) if the proprietary rights consist of an entire patti or mahal and the sum at which the rights have been valued for the purposes of a sale is sufficient to discharge the said balance and public debts in full, the Commissioner may, with the consent of the proprietor, order that the said balance and public debts be discharged in full by payment from the public treasury, and that the patti or mahal be held under direct management by the Collector as if the settlement had been annulled for arrears of land revenue under Section 153 of the [Uttar Pradesh] Land Revenue Act, 1901. Such management shall continue until the amount paid from the treasury with interest at [such rate as the [State Government] may from time to time fix, and which may not exceed by more than two per centum per annum] the rate of interest fixed by the [Union Government] on advances made to the [State Government] has been recovered from the profits after payment of the Government revenue (if any), the rates payable under the North-Western Provinces Local Rates Act, 1914 or any other Act for the time being in force, and the costs of management;
- (d) if any person to whom the said balance, or any portion thereof, is due, agrees to pay the remaining portion (if any) of the said balance and the proprietor's public debts, and to accept a mortgage in either of the forms set out in the First Schedule in lieu of such payment (if any) and the amount due to him, the Commissioner may, instead of proceeding under any of the preceding clauses, grant such a mortgage for a period not exceeding twenty years;
- (e) if the proprietor does not consent to accept a loan under clause (a) or clause (b), and action is not taken under clause (c) or clause (d) the Commissioner may order that any portion, or, if necessary, the whole, of the rights shall be sold in the manner hereinafter prescribed in order to discharge such balance and debts;
- (f) in cases where a loan is not permitted by the provisions of clause (a) or clause (b), or for any other reason is not tendered and action is not taken under clause (c) or clause (d), the Commissioner may, with the consent of the proprietor, order that the whole of the proprietor's rights be sold in the manner hereinafter prescribed in order to discharge the said balance or public debts; or may pass an order staying further proceedings under the Act.

Legislative changes.—The words in brackets in clause (a) were substituted for the words "the rate of five per cent per annum" and the words "Union Govt."

for 'G. of I.', in clauses (a) & (c) were substituted by A. O. 1937 read with A. O. 1950.

Note.—For rates in clauses (a) and (c) see Not. no. 547—Special/I-511, dated September 7, 1918, *Gazette*, 1918, Part I, p. 1060.

Interest.—The State Government has fixed 6½ P. C. as interest under Section 21.—Vide notification No. 547—Special/I-55 dated September 7, 1918 in U. P. *Gazette*, 1918, Part I, page 1060.

22. Consequences of orders staying further proceedings.—When an order has been passed under Section 21 staying further proceedings under the Act, the following consequences shall ensue, namely :

- (a) the whole of the proceedings under this Act, including those of the Special Judge, shall be set aside;
- (b) notwithstanding anything contained in the explanation to sub-section 2) of Section 13 all rights and remedies and proceedings stayed under Section 10, sub-section (1) shall revive to the creditors as if no action had been taken under this Act ; and
- (c) in computing the period of limitation applicable to any suit or other proceeding for the recovery of debts due from the proprietor, the period from the date of the publication of notice under Section 10 to date of the order of the Commissioner staying further proceedings under the Act, shall be excluded.

23. Attachment of proprietary rights.—(1) When an order for the sale of the proprietary rights of any proprietor has been made under Section 21, the Commissioner may order those rights to be attached and taken under the management of the Collector, who shall have for this purpose the same powers as are conferred on a Collector by the [Uttar Pradesh] Land Revenue Act, 1901, Section 151.

(2) The management shall continue until the rights are sold under this Act.

24. Mode of selling proprietary rights.—(1) All sales under this Act of proprietary rights in land shall be made by public auction in the manner prescribed by the [Uttar Pradesh] Land Revenue Act, 1901, for the sale of immovable property for arrears of land revenue.

(2) If, at the public auction of any proprietor's proprietary rights in land, any bid is made for those rights above the sum at which they have been valued for the purposes of purchase [by the State Government] the rights shall be sold to the highest bidder subject to a right of pre-emption [by the State Government], which must be exercised within thirty days of the date of sale ; and the proceeds of the sale shall be paid to the Collector, or such officer as the Commissioner may direct.

(3) If no such bid is made, the Commissioner shall direct a sum of money equal to the amount of that valuation to be paid from the public treasury to the Collector or such officer.

25. Duty of Collector.—(1) The Collector or such officer, as the case may be, shall thereupon, subject to the control of the Commissioner—

Firstly, pay from the money which he has received under Section 24 the proprietor's public debts ;

Secondly, out of the balance of that money, pay or discharge, so far as may be practicable, the unpaid balance of the claims and costs determined and awarded by the Special Judge in the order in which they are ranked under Section 17 by that Judge;

Thirdly, pay the surplus (if any) to the proprietor.

(2) When the whole of the proprietor's proprietary rights in land have been sold in execution of an order passed under Section 21, clause (e) or clause (f), and the proceeds of the sale are insufficient to discharge in full the amount referred to in this section, the unpaid balance of those amounts shall nevertheless be deemed to have been duly discharged.

Legislative changes.—The words [by the State Government] in two places in sub-section 2 were substituted for the words [by Govt.] by A. O. 1937 read with A. O. 1950.

26. Consequences of loan.—When a sum of money has been lent under Section 21, clause (a) or clause (b), to a proprietor, and applied as provided in that clause, any instalment of principal or interest or both remaining unpaid on the day fixed for the payment thereof shall be recoverable as if it were an arrear of land revenue due by him in respect of the land comprised in the valuation made under Section 20.

27. Conditions of purchase by Government.—When a sum of money has been paid from the public treasury in respect of any proprietary rights of a proprietor as provided in Section 24, and has been applied as provided in Section 25, the following consequences shall ensue (namely):

- (a) all such proprietary rights shall vest in [Government].
- (b) in respect of any of his sir and of land which he has cultivated continuously for twelve years at the date of the transfer, the proprietary rights in which are, under this section, vested in [Government] the proprietor shall be deemed to be an expropriate tenant holding the land directly under [Government].

Legislative changes—The word [Govt.] was substituted for the words [His Majesty for the purposes of the province], [His Majesty], [Crown] by A. O. 1950.

28. Power to declare that proprietor has ceased to be subject to disabilities.—In each of the following cases (namely),—

- (a) when a report has been submitted to the Commissioner under Section 16, or
- (b) when the claims and costs determined and awarded by the Special Judge have been paid or discharged in full under Section 20, or
- (c) when the amount lent, under Section 21, to a proprietor has been repaid, together with the interest due thereon, or
- (d) when the amount so lent with interest has been recovered from him as an arrear of land revenue, or the balance thereof remaining unpaid has been remitted by the [State Government],
- (e) when the whole, or, where it is necessary to sell only a portion, that portion of his proprietary rights in land has been sold under this Act, or those rights have vested in [Government] under Section 27, and the amount (if any) lent under Section 21, clause (b), together with

- the interest due thereon, has been repaid, or recovered, or remitted, or
- (f) when the amount applied in discharge of the proprietor's debts under Section 21, clause (c), has been recovered with interests in the manner prescribed in that clause, or
 - (g) when a mortgage has been granted by the Commissioner under Section 21, clause (d), or
 - (h) when an order staying proceeding under this Act has been passed under Section 21, clause (t), [or
 - (i) when no claim has been presented under Section 9.]

the Commissioner shall declare that the proprietor has ceased to be subject to the disabilities mentioned in Section 10, sub-section (2).

Legislative changes.—The words “or (i) when no claim has been Presented under Section 9” were added by Section 2 of U. P. Act III of 1922.

29. Private debts incurred during period of disability.—A money decree on account of private debts incurred within the period of disability shall not be capable of execution at any time against any land owned by the proprietor during that period, whether by way of attachment or sale.

CHAPTER VI APPEAL AND REVISION

30. Appeals.—(1) An appeal against any decision or order of the Special Judge under this Act shall lie to the Commissioner if preferred within sixty days from the date of the decision or order, and not later, unless the appellant satisfies the Commissioner that he had sufficient cause for not presenting the appeal within that period.

(2) Subject to the power of revision next hereinafter provided the decision of the Commissioner on an appeal under this section shall be final.

Analogous law.—Section 45 of the U. P. Encumbered Estates Act.

31. Power to call for proceedings and pass orders thereon.—The Board of Revenue or the Commissioner may, of its or his own motion, or on the application of any person concerned call for, and revise the proceedings in any case under this Act, and pass order thereon, consistent with the provisions herein contained, as it or he thinks fit :

Provided that nothing in this section shall empower the Commissioner to pass any order reversing or modifying an order passed by the Board of Revenue.

Analogous law.—Section 46 of the U. P. Encumbered Estates Act.

CHAPTER VII MISCELLANEOUS

32. Death of proprietor during proceedings.—If a proprietor with regard to whom a notice has been published under Section 9 dies before a declaration has been made in respect of him under Section 28,—

- (a) the proceedings under this Act shall be continued as nearly as may be possible in all respects as if the proprietor were still living ; and

(b) any person succeeding to the whole or any portion of the proprietor's proprietary rights in land shall become subject, in respect of those rights to the disabilities imposed by Section 10, sub-section (2), and shall continue so subject until a declaration has been made in respect of him under Section 28.

33. Investigation to be deemed a judicial proceeding. Special Judge deemed public servant within the meaning of Indian Penal Code.—Every investigation conducted by the Special Judge with reference to any claim made to him under this Act, or to any matter connected with any such claim, shall be deemed to be a judicial proceeding within the meaning of the Indian Penal Code; and the Special Judge shall be deemed to be a public servant within the meaning of that Code.

34. Power to summon witnesses, compel production of documents and award costs.—For the purposes of compelling the attendance of witnesses and the production of documents, and of awarding costs, the Special Judge shall have the powers conferred on a Civil Court by the Code of Civil Procedure.

35. Bar of suits.—No suit or other proceeding shall be maintained against any person in respect of anything done by him in good faith pursuant to this Act.

Good Faith—meaning.—A thing shall be deemed to be done in "good faith" where it is in fact done honestly, whether it is done negligently or not—General Clauses Act, Section 4 (17).

36. Power to make rules.—(1) In addition to the powers hereinbefore conferred the [State Government] may make rules to carry out any of the purposes and objects of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may—

(a) regulate the procedure in all cases under this Act ; and

(b) declare what shall, for the purposes of this Act, be deemed to be the vernacular language of any specified district.

(3) All rules made by the [State Government] under this Act shall be published in the [official Gazette], and, on such publication, shall have effect as if enacted by this Act.

37. Repeal.—The enactments mentioned in the Second Schedule are repealed to the extent specified in the fourth column thereof.

THE FIRST SCHEDULE

FORMS OF MORTGAGE

(See Section 21)

1. A mortgage in the form of a usufructuary mortgage by which the mortgagor delivers proprietary possession of the land to the mortgagee and authorizes him to retain such possession and to receive the rents and profits of the land in lieu of interest and towards payment of the principal, on condition that after the expiry of the term agreed on, or (if no term is agreed on, or if the term agreed on exceeds twenty years) after the expiry of twenty years, the land shall be re-delivered to the mortgagor.

(2) A mortgage in the form of a mortgage without possession, subject to the condition that, if the mortgagor fails to pay principal and interest according to his contract, the mortgagee may apply to the Collector to place him in possession for such term, not exceeding twenty years, as the Collector may consider to be equitable, the mortgage to be treated as a ususfructuary mortgage for the term of the mortgagee's possession and for such sum as may be due to the mortgagee on account of the balance of principal due and of interest due not exceeding the amount claimable as simple interest at such rate and for such period as the Collector thinks reasonable.

**THE SECOND SCHEDULE
ENACTMENTS REPEALED**
(See section 37)

Year	Number	Short title	Extent of repeal
1882	XVI	The Jhansi Encumbered Estates Act, 1882.	The whole.
1890	XX	The North-Western Provinces and Oudh Act, 1890.	So much as relates to Act XVI of 1882.

Rules made under the Bundelkhand Encumbered Estates Act, 1903

(Published in U. P. Gazette, dated February 26, 1916, under Notification No. 320/2-568, dated February 21, 1913.)

I.—The Collector (See also rule 19)

1. On receipt of an application from a proprietor under Section 5, the Collector shall call for a report from the tahsildar on the following points :—

- (1) The extent of the land owned by the proprietor within the district and so far as is known, outside the district ;
- (2) If the proprietor is not the sole owner of the land whether the co-sharers are indebted and have made similar applications under Section 6 or not ;
- (3) Whether the proprietor is resident in Bundelkhand, the Dudhi, Bijaigarh, Aghori and Singrauli parganas of the Mirzapur district or trans-Jamuna portion of the Etawah district ;
- (4) Whether the proprietor is a member of an agricultural tribe as defined in any issued notification under the Bundelkhand Alienation of Land Act, 1903, as amended by [Uttar Pradesh] Act IV of 1915 ; and
- (5) Whether the proprietor is the purchaser of the property concerned, or whether it is his ancestral property.

2. If the Collector finds that the applicant does not own land in his district, he shall refuse to forward the application to the Commiss-

sioner, and shall inform the applicant of his order and of the reason for it.

3. If the Collector finds that the applicant is not sole owner of the land and there are other indebted co-sharers who have not made applications under Section 6, he should suggest to the other co-sharers the advisability of making such applications; and, in the event of their refusal, he may, at his direction, make application with respect to them.

4. The Collector shall not ordinarily exercise the power conferred upon him of making application with respect to proprietors under Section 6, sub-section (2), within a period of six months from the issue of a notification under Section 3, but he may do so in cases under rule 3 and in special cases falling under the following rule, and shall do so in cases of proprietors who are members of agricultural tribes against whom no mortgages are pending in the Civil Courts.

5. After the expiry of six months from the date of the issue of the notification under Section 3, the Collector shall, within the period of extension notified under sub-section (3) of Section 6, make application with respect to the following proprietors in cases where they have failed to make applications themselves :—

Proprietors who are members of agricultural tribes as defined in any notification issued under the Bundelkhand Alienation of Land Act, 1903, and whose lands are encumbered with mortgages.

6. With reference to the provisions of Sections 24 and 27 of the Act, the rents of ex-proprietary tenants shall be fixed by the Collector or Assistant Collector as directed by Section 186 of the [Uttar Pradesh] Land Revenue Act, 1901; in the case of proprietors whose rights have been sold for the recovery of land revenue.

II.—The Special Judge

7. Whenever any summons, notice, order or other process has to be served or executed in accordance with or as nearly as may be in accordance with the rules prescribed by the Code of Civil Procedure, the fee chargeable in the Court of the Special Judge for such service or execution shall not exceed one-fourth of the fee prescribed in Part III of the Table of Fees framed by the High Court under Clause (1), Section 20 of Court Fees Act (VII of 1870).

8. When a notice is issued under Section 9, the Special Judge shall cause a copy thereof to be sent by registered letter to every creditor named by the applicant under Section 8(1)(c), and for that purpose may levy a fee of four annas from the applicant for the postage and registration fee of each such copy.

9. A copy of the notice published under Section 9 shall be sent to every Civil and Revenue Court in the district and lists of disqualified proprietors shall also be forwarded monthly to every Civil Court.

10. Every claim made under Section 11 shall be verified by the claimant or some other competent person in the manner required by law for the verification of plaints.

11. The copies of orders issued to proprietors and claimants under Section 13 shall ordinarily be forwarded by post under a registered cover. The postage with the registration fee shall be deposited by the claimant when he files his written statement of claim under Section 11.

12. If the person to whom a copy of an order under Section 13 has been sent refuses to receive the letter tendered by the post office, or if he cannot be found, a copy of the order shall be served through the Collector in the manner provided for the service of summonses in the Code of Civil Procedure.

13. Every summons to a person to give evidence or produce a document shall be served as nearly as may be in the manner prescribed in rules 11 and 12.

14. Summonses or other processes shall be served at the expense of the party on whose behalf they are served unless the Court otherwise directs. The fees leviable for such service shall be paid in a term to be fixed by the Court before the process is issued.

15. When the Special Judge has passed an order under Section 18 (1) for the ejectment of any person from any land, such person may, provided that the amount of the award, if any, in his favour, has first been discharged, be ejected—

(1) in cases where he is not in cultivating possession, at any time after the date of such order;

(2) in cases where he is in cultivating possession, at any time between the 1st May and 30th June.

16. The procedure of the Court of the Special Judge shall be guided generally by the provisions of the following portions of the Code of Civil Procedure.

O. VIII, rules 1 to 10. O. VI, rules 1, 2, 14, 15, 16, 17 and 18. O. X, rules 1, 2, 3 and 4. O. XVII, rules 1, 2 and 3. O. XVI, rules 1 to 21. O. XVIII, rules 1, 2(1), 2, (3), 3, 4, 5, 6, 8, 9. Section 138, O. XVIII, rules 7, 10, 11, 12, 13, 14, 15, 16 and 17. O. XIX, rules 1, 2 and 3, Section 139. Section 33, O. XX, rules 1 and 6, Section 152, Section 3. O. XX, rules 19 and 20.

III.—The Commissioner

17. The fee chargeable in the Court of the Commissioner for serving a notice of appeal shall be that prescribed by Article 1, Part II of the Table of Fees framed by the High Court under clause (1), Section 20 of the Court Fees Act (VII of 1870).

18. The Commissioner should ordinarily refuse to direct an enquiry to be made under Section 7 by the Special Judge—

(1) if the proprietor is not a member of an agricultural tribe as defined in any notification issued under the Bundelkhand Alienation of Land Act, 1903 as amended by Bundelkhand Alienation of Land (Amendment) Act, 1915, except in cases falling under rule 3;

(2) if, though the proprietor is a member of an agricultural tribe, the greater portion of the estate is situated beyond the limits of Bundelkhand or the Dudhi, Bijaigarh, Aghori and Singrauli parganas in the Mirzapur district or the trans-Jumuna portion of the Etawah district;

(3) if the land is not encumbered with mortgages, except in cases falling under rule 3.

19. Sales ordered by the Commissioner under Section 20 shall be carried out under the orders of the Collector.

20. The procedure of the Commissioner's Court as a Court of appeal shall be generally guided by the following provisions of the Code of Civil Procedure :—

Section 96 (1), (2) and (3), Order XLI, rules 1, 2, 3, 4, 5 (1), (2), (3), (4), 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22 (1), (2), (3), (4), and (5), 23, 24, 25, 26, 27, 28, 29, 30 and 31, Section 98, Order XLI, rules 32, 33, 34, Section 98, Order XLI, rules 35, 36 and 37, Section 107 (1) and (2), Order XXII, Rules 1 to 12, Section 149, and Section 144 (1).

THE CANNING COLLEGE ACT, 1922

(U. P. Act No. VII OF 1922)

CONTENTS

Sections	Sections
1. Short title.	bilities, etc.
2. Transfer of the College to the University.	6. Saving for existing staff.
3. Transfer of debts and liabilities.	7. Constitution of the Board of Management.
4. Saving for agreements, deeds, actions etc.	8. Contribution under U. P. Act IV of 1920.
5. Adjustment of property and lia-	

ADAPTED AND MODIFIED BY THE ADAPTATION OF LAWS ORDER, 1950

[Received the assent of the Governor on the 29th April, 1922, and of the Governor-General on the 10th June, 1922, and was published under Section 81 of the Government of India Act on the 1st July, 1922, Gaz. 1922, Pt. VII p. 107.]

An Act to merge the Canning College in the University of Lucknow and to transfer all the property and liabilities of the Canning College to the University of Lucknow.

Preamble.—Whereas by the Lucknow University Act, 1920, the University of Lucknow was constituted and founded at Lucknow with power to confer degrees and other distinctions, and whereas the Canning College situate at Lucknow, hereinafter referred to as "the Canning College," has under Section 46 of the said Act ceased to be a College affiliated to the University of Allahabad, and whereas the Governing Body of the Canning College are desirous and it is expedient that the Canning College should be merged in the University of Lucknow and maintained as a College, and that all its property and liabilities should be transferred to and vested in the University of Lucknow, herein-after referred to as "the University," and whereas the previous sanction of the Governor-General has been obtained under sub-section (3) of Section 80A of the Government of India Act; It is hereby enacted as follows :—

Prefatory Note.—For S. O. R., see Gaz., 1922, Pt. VIII, p. 8; for R. S. Com., see ibid 1922, Pt. VIII, pp. 207—211; for discussion, see L. C. Pro., d. Jan. 24, 1922, Jan. 25, 1922 and March 21, 1922, in Vol. VI, p. 105, Vol. VI, pp. 128—129 and Vol. VII, pp. 23—25, respectively.

1. Short title.—This Act may be called the Canning College Act, 1922.

2. Transfer of the College to the University.—From the commencement of this Act the Canning College shall be and become by virtue of this Act a College maintained by the University, and all property movable and immovable of every description and all endowments, rights and privileges of the Canning College which immediately before that date belonged to or were vested in that College shall, by virtue of this Act without any conveyance or other instrument be transferred to and vested in the University, and shall be applied to the objects and purposes of the Canning College as a College maintained by the University.

3. Transfer of debts and liabilities.—From the commencement of this Act, all debts and liabilities of the Canning College shall by virtue of this Act be transferred and attached to the University, and shall thereafter be discharged and satisfied by the University.

4. Saving for agreements, deeds, actions, etc.—All agreements, articles, contracts, deeds and other instruments and all actions and proceedings and causes of action or proceedings which immediately before the commencement of this Act were existing or pending in favour of or against the Canning College shall continue and may be carried into effect, enforced or prosecuted by or in favour of or against the University to the same extent and in like manner as if the University instead of the Canning College had been party to or interested in the same respectively.

5. Adjustment of property and liabilities, etc.—(1) The University shall by agreement with the Governing Body of the Canning College as constituted immediately before the commencement of this Act adjust and settle all questions arising with respect to any endowments, property, powers, privileges authorities, debts, liabilities, obligations or expenses in which the parties to the agreements are interested and also with respect to any other College matters.

(2) An agreement under this section may provide for the transfer, retention, division, apportionment or commutation of any endowments, property, debts, liabilities or obligations and for payment being made by either party to the other in respect of any such transfer, retention, division or apportionment or commutation or in respect of the salary or remuneration of any officer or person and generally may make as between the parties to the agreement any provisions necessary or proper for carrying into effect the purposes of this Act.

(3) In default of agreement on any such question as aforesaid or so far as such agreement does not extend, the question shall be referred to a Board of Arbitration consisting of (1) the Minister of Education, (2) one representative of the University, (3) one representation of the British Indian Association of Oudh, on the application of either party and their award may provide for any matter for which any agreement might have provided. Every such reference shall be deemed to be a submission to arbitration within the meaning of the Indian Arbitration Act, 1899¹, and all the provisions of that Act, with the exception of Section 2 thereof, shall apply accordingly :

Provided that nothing in this section shall be deemed to affect the provisions of Section 6 of the Canning College and British Indian Association Contribution Act, 1920².

1. See now the Arbitration Act 1940 (Act no. X of 1940).

2. *Infra.*

6. Saving for existing staff.—All professors and other members of and persons attached to or associated with the teaching staff of the Canning College and all salaried or paid officers and servants of the Canning College shall hold as nearly as practicable the same offices and places in the College as they held in the said College immediately before the commencement of this Act upon the same term and conditions unless and until the University shall, subject to the provisions of Section 4, otherwise decide.

7. Constitution of the Board of Management.—Any power or right of the Government of [Uttar Pradesh]³ or any power or right of the British Indian Association of Oudh as such to be represented on the Governing Body of the Canning College shall from the commencement of this Act be transferred to and may be exercised by the University :

Provided that upon any Board of Management of the Canning College appointed by the University under Section 25 of the Lucknow University Act, 1920 not less than one-half of the members shall be persons who are members of the Court of the University and are also members of the British Indian Association of Oudh.

8. Contribution under U. P. Act IV of 1920.—Nothing in this Act shall be deemed to affect the liability of persons named in Section 3 of the Canning College and British Indian Association Contribution Act, 1920⁴, to contribute in accordance with the provisions of that Act for the maintenance and support of the Canning College as a College maintained by the University.

THE CANNING COLLEGE AND BRITISH INDIAN ASSOCIATION CONTRIBUTION ACT, 1920

(U. P. Act No. IV of 1920)

CONTENTS

Sections

- 1 Short title.
- 2 Definitions.
- 3 Liability of certain persons to contribution for support of Canning College and British Indian Association.
- 4 Method of realization of Contribution.

Sections

- 5 Distribution of Contribution realized.
- 6 Liability of Canning College to pay portion of contribution to Colvin Taluqdars' School.
- 7 Power of the State Government to make rules.

ADAPTED AND MODIFIED BY THE ADAPTATION OF LAWS
ORDER, 1950

[Received the assent of the Lieutenant-Governor on the 8th October, 1920, and of the Governor-General on the 18th November, 1920, and was published in Gaz., 1920, Pt. VII, p. 1321 under Section 81 of the Government of India Act on the 4th December, 1920].

An Act to make better provision for the realization of certain contributions for the maintenance and support of the Canning College and the British Indian Association.

3. Subs. by the A. O. 1950 for [the United Provinces].

4. Infra.

Whereas certain contributions for the maintenance and support of the Canning College situate at Lucknow and of the British Indian Association, a registered body in Lucknow, have been hitherto realized by the Government along with the land revenue from the taluqdars and grantees of Oudh and their heirs, legatees, and transferees, and whereas it is expedient to remove certain doubts which have arisen as to the liability of the aforesaid persons or their representatives or legatees or assigns ; It is hereby enacted as follows :

Prefatory Note.—For S. O. R., see *Gaz.*, 1920, Pt. VII, p. 94-B; for discussion in L. C., see *ibid*, 1920, Pt. VII, pp. 210, 501, 778 and 1104. This Act stands rep. by virtue of S. 339 (a) of U. P. Act I of 1951 in all arrears in respect of which notes under S. 4 of the aforesaid Act I of 1951 have already been made.

For S. O. R., of U. P. Act No. XXXVII of 1948 see *Gaz. Extra*, d. Sept. 9, 1947, pp. 8-9, for discussion, see L. A. Pro., d. Nov. 4 and 5, 1947, in Vol. XLIII, pp. 129, 169-179, d. Nov. 19, 1948, in Vol. L, pp. 224-231, d. Feb. 26, 1949, in Vol. LIV., p. 32 and L. C. Pro., d. Sept. 13 and 21, 1947, in Vol. IX, pp. 429 and 774-800, d. Jan. 17, 1948, in Vol. XII, p. 401, for publication, see *Gaz.* 1948, Pt. VII-A pp. 69-70.

1. **Short title.**—This Act may be called the Canning College * * *¹ Contribution Act, 1920.

2. **Definitions.**—In this Act, unless there is something repugnant in the subject or context,—

* * *

(2) "Canning College" means the Canning College situate at Lucknow ;

(3) the expression "estate," "grantee," "legatee" and "taluqdar" bear the same meaning as in the Oudh Estates Act, 1869, as amended by the Oudh Estates (Amendment) Act, 1910 ;

(4) "heir" bears the same meaning as in the Oudh Estates Act, 1869, as amended by the Oudh Estates (Amendment) Act, 1910, but includes also a "widow" or a "mother" who has inherited or inherits property as such ;

(5) "transfer" with its grammatical variations and cognate expressions means an alienation *inter vivos*, and includes a transfer in execution of a decree or by means of a compromise or settlement and a sale held for the recovery of land revenue or for the enforcement of any other claim of the [State Government]³, whether before or after the commencement of this Act ;

(6) "transferee from a taluqdar or grantee" includes a transferee from the heir or legatee of a taluqdar or grantee and the legal representative, successor, and assign of such transferee.

"Estate"—meaning.—See Section 2 of the Oudh Estates Act. "Estate" means :—

(a) The Taluka or immovable property acquired or held by a Taluqdar or grantee in the manner mentioned in Section 3, Section 4 or Section 5, and

(b) The other immovable property situated in the [Uttar Pradesh] in which a Taluqdar or grantee or his heir or legatee or a transferee referred to in Section 14 has a separate, permanent, heritable and transferable right and in respect of which he has made a declaration in accordance with the provisions of Section 32-A of this Act."

1. The words [and British Indian Association] omit. by S. 2 of U.P. Act XXXVII of 1948.
2. Sub-section (1) of S. 2 omit. by

- S. 3 *ibid.*
3. Subs. by the A.O. 1950 for [Prov. Govt.] which had been subs. by the A. O. 1937 for [Govt.].

Grantee.—"means any person whose name is entered in the fifth or sixth of the lists mentioned in Section 8" (*vide* Section 2, Oudh Estates Act).

Legatee.—See Section 2, Oudh Estates Act. A person in whose favour the bequest came into operation before the Act is not a legatee⁴.

Taluqdar.—"means any person whose name is entered in the first of the lists mentioned in Section 8," (*vide* Section 2, Oudh Estates Act).

Heir.—"means a person who has inherited or inherits otherwise than as a widow or mother, an estate or portion of estate whether before or after the commencement of this Act." (*vide* Section 2, Oudh Estates Act).

The definition has been modified by this Act as to include 'widow' and 'mother' as well. It includes an heir who has succeeded according to the provision of the Oudh Estates Act in any degree of descent to the Taluqdar⁵.

3. Liability of certain persons to contribution for support of Canning College.—Every taluqdar or grantee and every heir, legatee or transferee of a taluqdar or grantee shall pay along with the land revenue which he is liable to pay as such, a contribution for the maintenance and support of the Canning College * * *⁶ at the rate of [*three-quarters of one per cent.*]⁷ of the total amount of such revenue.

* * *

Provided * * *⁸ that when any estate or portion of an estate has been transferred prior to the first day of April, 1909, to any person, who is not a taluqdar or grantee or a heir or legatee of a taluqdar or grantee the transferee shall pay such contribution at the rate of [*three-fifths of one per cent.*]⁹ of the total amount of land revenue, which he is liable to pay to the [State Government]¹⁰ in respect of the estate or portion of estate so transferred.

Gift—effect.—Where a deed of gift executed by a Taluqdar lays down that the plaintiff is to hold the taluqa as a superior proprietor and the defendants are proprietors of only under-proprietary right they (the defendants) are not liable to make contribution¹¹.

4. Method of realization of contribution.—The contribution referred to in Section 3 shall be realized by the revenue authorities along with the land revenue and every provision of the United Provinces Land Revenue Act, 1901, relating to the recovery of land revenue shall apply to the recovery of such contributions.

5. Distribution of contribution realized.—[*The whole of the contribution realized under Section 4 shall be paid into the account of the Canning College.*]¹²

6. Liability of Canning College to pay portion of contribution to Colvin Taluqdars School.—Out of its receipts aforementioned the

Case Law

4. *Thakurain Balraj Kuer v. Rai Jagatpal Singh*, 31 I A 132; *Th Sheo Singh v. Rani Raghubans Kuer*, 32 I A 203.
5. *Gaya Baksh Singh v. Deo Singh*, 9 Luck 484, 11 O W N 351.
11. *Mohd. Imtiaz Ali Khan v. Mohd. Akbar Husain Khan*, 1937 O W N 566.

Leg. Ref.

6. The words [and the British Indian Association] omit by S. 4 (i) of U. P. Act XXXVII of 1948.
7. Subs for [1 1/4 per cent.] by sub-

section (ii) of S. 4 *ibid.*

8. The first proviso to S. 3 and the word [further] in the second proviso omit. by sub-sections (iii) and (iv) respectively of S. 4 *ibid.*
9. Subs. for [one per cent.] by sub-s. (v) of S. 4 of Act XXXVII of 1948.
10. Subs. by the A. O. 1950 for [Provl. Govt.] which had been subs. by the A. O. 1937 for [Govt.].
12. Subs. by S. 5 of U. P. Act XXXVII of 1948 for S. 5 of U. P. Act IV of 1920.

Committee of the Canning College shall pay to the Committee of the Colvin Taluqdars' School at Lucknow for its support a sum which shall not exceed one-third of those receipts and shall not be less than—

- (i) twenty-five thousand rupees if the said receipts are not less than seventy-five thousand rupees,
- (ii) one-third of the said receipts if they are less than seventy-five thousand rupees.

7. Power of the State Government to make rules —The [(State Government)¹³ may, from time to time]¹⁴ frame rules in accordance with the provisions of this Act, for the guidance of the revenue authorities in regard to the collection of the aforesaid contributions.

THE UTTAR PRADESH CANTONMENTS (CONTROL OF RENT AND EVICTION) ACT, 1952

(ACT NO. X OF 1952)

CONTENTS

Sections

1. Short title and extent.
2. Act not to apply to certain accommodation,
3. Definitions.
4. Control of rent.
5. Procedure in suits under section.
6. Bar or appeals from decrees or order in suits under section.
7. Determination of reasonable annual rent in certain cases.
8. Unlawful charges not to be claimed or received.
9. Control of letting.
10. Eviction of persons occupying accommodation in contravention of Section 9.
11. Eviction of tenants occupying accommodation under Section 9.

Sections

12. Proceedings under Section 11 may be converted into suits in certain cases.
13. Special costs for frivolous or vexatious applications or objections.
14. Restrictions on eviction.
15. Penalty.
16. Attempts, etc.
17. Offence by Companies.
18. Act to override other laws.
19. Pending suits for eviction.
20. Execution of pending decrees, for eviction.
21. Orders under Act not to be questioned in any Court.
22. Protection for action taken in good faith.
23. Power to make rules.
24. Repeal of Ordinance II of 1952.

[Received the assent on February 27, 1952]

An Act to provide for the control of rent of house accommodation in cantonments in Uttar Pradesh and to prevent the eviction of tenants therefrom.

Be it enacted by Parliament as follows :—

Prefatory Note.—For S. O. R., see Gaz. of I., d. Feb. 9, 1952, Pt II, S. 2, pp. 23—32 and for discussion, see Parliamentary Debates, d. Feb. 6, 1952, columns 23—24, in Vol. I, no. 2, d. Feb. 14, 1952, columns 572—574, in Vol. I, no. 7.

1. Short title and extent.—(1) This Act may be called the Uttar Pradesh Cantonments (Control of Rent and Eviction) Act, 1952.

(2) It extends to all the cantonments in the State of Uttar Pradesh.

13. Subs. by the A. O. 1950 for [Prov'l. Govt.]
14. Subs. for [The Board of Revenue may, from time to time, subject to the sanction of the L. G.] by

S. 2 and Sch. of the U. P. Act XII of 1922 as amended by the U. P. Act I of 1924 and read with the A. O. 1937.

History.—The U. P. (Temporary) Control of Rent and Eviction Act III of 1947 prior to its amendment applied to cantonment areas also. It was amended by the U. P. (Amendment) Act 44 of 1948 which came into force on 15th December, 1948 and excluded the cantonment areas from the operation of the Act. In 1949 the U. P. Government promulgated an Ordinance which came into force on 26th September, 1949 and re-included the area within the Act. Subsequently a Bill known as the U. P. (Temporary) Control of Rent and Eviction (Amendment) Bill, 1950 was passed by the State Legislature, but the President did not assent to it and it never became law. The Ordinance of 1949 also lapsed after the expiry of six months with the result that the Act as amended by Act 44 of 1948 had no application to cantonment areas, as under item No 3 of List I of the Seventh Schedule of the Constitution of India “the regulation of house accommodation” in cantonment areas was within the exclusive jurisdiction of the Central Government and State Legislature could not make any laws in that respect. The U. P. Government therefore approached the Central Government and the present Act was passed in terms of Act III of 1947.

Commencement.—The Act received the assent of the President on 27th February, 1952 and was published in the *Gazette of India (Extraordinary)* dated 28th February, 1952 when it came into force.

2. Act not to apply to certain accommodation.—Nothing contained in this Act shall apply to—

- (a) any premises belonging to the Government ;
- (b) any tenancy or other like relationship created by a grant from the Government in respect of premises taken on lease or requisitioned by the Government ; or
- (c) any house which is, or may hereafter be, appropriated by the Central Government on lease under the Cantonments (House Accommodation) Act, 1923 (VI of 1923).

Analogous Law.—See Section 1 (2-a) third proviso of Act III of 1947.

3. Definitions.—In this Act, unless the context otherwise requires,—

- (a) “accommodation” means house accommodation, residential or non-residential, in any cantonment to which this Act applies, and includes—
 - (i) the gardens, grounds or outhouses, if any, appurtenant to the building or any part thereof ;
 - (ii) any furniture supplied by the landlord for use in the house or any part thereof ;
 - (iii) any fittings affixed to the building or any part of the building for the more beneficial enjoyment thereof ;
- (b) “district magistrate” includes an officer authorised by a district magistrate to perform any of his functions under this Act ;
- (c) “landlord” means a person to whom rent is payable by a tenant in respect of any accommodation, and includes—
 - (i) the agent, attorney, heir or assignee of the landlord, and
 - (ii) a tenant in relation to a sub-tenant ;
- (d) “lease” includes a sub-lease ;
- (e) “municipal assessment” means—
 - (i) in respect of accommodation which was assessed by a cantonment board on or before the 1st day of April, 1942, the annual rental value so assessed and in force on the said date, and

History.—The U. P. (Temporary) Control of Rent and Eviction Act III of 1947 prior to its amendment applied to cantonment areas also. It was amended by the U. P. (Amendment) Act 44 of 1948 which came into force on 15th December, 1948 and excluded the cantonment areas from the operation of the Act. In 1949 the U. P. Government promulgated an Ordinance which came into force on 26th September, 1949 and re-included the area within the Act. Subsequently a Bill known as the U. P. (Temporary) Control of Rent and Eviction (Amendment) Bill, 1950 was passed by the State Legislature, but the President did not assent to it and it never became law. The Ordinance of 1949 also lapsed after the expiry of six months with the result that the Act as amended by Act 44 of 1948 had no application to cantonment areas, as under item No 3 of List I of the Seventh Schedule of the Constitution of India “the regulation of house accommodation” in cantonment areas was within the exclusive jurisdiction of the Central Government and State Legislature could not make any laws in that respect. The U. P. Government therefore approached the Central Government and the present Act was passed in terms of Act III of 1947.

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- (a) any premises belonging to the Government ;
- (b) any tenancy or other like relationship created by a grant from the Government in respect of premises taken on lease or requisitioned by the Government ; or
- (c) any house which is, or may hereafter be, appropriated by the Central Government on lease under the Cantonments (House Accommodation) Act, 1923 (VI of 1923).

Analogous Law.—See Section 1 (2-a) third proviso of Act III of 1947.

3. Definitions.—In this Act, unless the context otherwise requires,—

- (a) “accommodation” means house accommodation, residential or non-residential, in any cantonment to which this Act applies, and includes—
 - (i) the gardens, grounds or outhouses, if any, appurtenant to the building or any part thereof ;
 - (ii) any furniture supplied by the landlord for use in the house or any part thereof ;
 - (iii) any fittings affixed to the building or any part of the building for the more beneficial enjoyment thereof ;
- (b) “district magistrate” includes an officer authorised by a district magistrate to perform any of his functions under this Act ;
- (c) “landlord” means a person to whom rent is payable by a tenant in respect of any accommodation, and includes—
 - (i) the agent, attorney, heir or assignee of the landlord, and
 - (ii) a tenant in relation to a sub-tenant ;
- (d) “lease” includes a sub-lease ;
- (e) “municipal assessment” means—
 - (i) in respect of accommodation which was assessed by a cantonment board on or before the 1st day of April, 1942, the annual rental value so assessed and in force on the said date, and

(ii) in respect of accommodation which was assessed by a cantonment board after the said date, the annual rental value first assessed after the said date;

(f) "officer commanding the station" means the military officer for the time being in command of the forces in a cantonment or, if that Officer is the Officer Commanding the Area or Officer Commanding-in-Chief, the Command, the military officer who would be in command of those forces in the absence of the Officer Commanding the Area and Officer Commanding-in-Chief, the Command, and includes any officer authorised by the officer commanding the station to exercise the powers of an officer commanding the station under this Act;

(g) "reasonable annual rent" means—

(1) in the case of accommodation constructed before the 1st day of October, 1946,—

(i) if it is separately assessed to municipal assessment, its municipal assessment *plus* twenty-five per cent. thereon;

(ii) if it is a part only of the accommodation so assessed, the proportionate amount of the municipal assessment of such accommodation *plus* twenty-five per cent. thereon;

(iii) if it is not assessed to municipal assessment—

(a) if it was held by a tenant on rent between the 1st day of April, 1942 and the 30th day of September, 1946, fifteen times the rent for the one month nearest to and after the 1st day of April, 1942; and

(b) if it was not so held on rent, the amount determined under Section 7; and

(2) in the case of accommodation constructed on or after the 1st day of October, 1946, the rent determined in accordance with Section 7;

(h) "tenant" means the person by whom rent is, or, but for a contract express or implied, would be payable for any accommodation, and includes any person holding or occupying the accommodation as a sub-tenant.

Analogous Law.—See Section 2 of Act III of 1947.

4. Control of rent.—(1) Except as hereafter in this section provided, the rent payable for any accommodation shall be such as may be agreed upon between the landlord and the tenant.

(2) Where the rent for any accommodation has not been agreed upon, or where in the case of tenancies continuing from any date before the 1st day of October, 1946, the landlord wishes to enhance the rent agreed upon, he may, by notice in writing, fix the annual rent at, or enhance it to an amount not exceeding, the reasonable annual rent:

Provided that the enhanced rent shall not exceed the rent, if any, payable on the 1st day of October, 1946, by more than fifty per cent. thereof:

Provided further that nothing in this section shall entitle the landlord to enhance the rent in the case of leases for a fixed term

during the continuance of the term unless so permitted by the contract of tenancy.

(3) If any accommodation is let after the 16th day of Junuary, 1952, without the rent being agreed upon between the landlord and the tenant, the rent fixed under sub-section (2) shall be payable from the date of commencement of the tenancy and where the rent agreed upon is enhanced under the said sub-section, the enhanced rent shall be payable from the first day of the month next after the month in which the notice is given.

(4) If the landlord claims that the reasonable annual rent of any accommodation is inadequate, or if the tenant claims that the reasonable annual rent is excessive or that the agreed rent is higher than the reasonable annual rent, he may institute a suit for fixation of rent in the Court of the Munsif having territorial jurisdiction if the annual rent claimed or payable is five hundred rupees or less and if it exceeds five hundred rupees in the Court of the Civil Judge having territorial jurisdiction or, if there is no such Civil Judge, in the Court of the District Judge :

Provided that the Court shall not vary the agreed rent unless it is satisfied that the transaction was unfair and, in the case of a lease for a fixed term made before the 1st day of April, 1942, that the term has expired.

(5) Notwithstanding anything contained in sub-sections (1), (2) and (3), the rent fixed by the Court under sub-section (4) shall, so long as this Act remains in force, be payable by the tenant and from such date as the Court may direct.

Explanation—For the purposes of this section, "accommodation" includes any accommodation let on a monthly basis.

Analogous Law.—See Section 5 of Act III of 1947. The two sections are similar except for slight changes, such as 16th January, 1952, has been introduced in sub-section (3), and Explanation (i) of Section 5 has been incorporated as sub-section (4).

5 Procedure in suits under section.—In determining the amount of annual or monthly rent in any suit under sub-section (4) of Section 4, the Court shall take into account—

(a) in the case of accommodation constructed before the 1st day of October, 1946, the pre-war rent, the reasonable annual or monthly rent, the prevailing rent on the date of the suit for similar accommodation in the locality, the cost of maintenance of, and repairs to, such accommodation, and any other material circumstances provided by the plaintiff or the defendant :

(b) in the case of accommodation constructed on or after the said date, the cost of construction and maintenance of, and repairs to, the accommodation, its situation and any other circumstances which the Court may consider material.

Analogous Law—See Section 6 of Act III of 1947. Both the sections are similar except that 1st October, 1946 has been replaced by 1st July, 1946.

6. Bar of appeals from decrees or order in suits under section.—No appeal shall lie from any decree or order of the Munsif, the Civil Judge or the District Judge, as the case may be, in a suit brought under sub-section (4) of Section 4 :

Provided that the decree or order so passed (except in so far as it relates to the amount of rent) shall not operate as *res judicata* between the parties or their representatives in interest in any suit or proceeding under any other law.

Analogous Law.—See sub-section (2) of Section 6 of Act III of 1947.

7. Determination of reasonable annual rent in certain cases.—

(1) In the case of any accommodation constructed after the 30th day of September, 1946, or falling within item (b) of sub-clause (1) (iii) of clause (g) of Section 3, the District Magistrate may, on the application of the landlord or the tenant, determine the reasonable annual rent thereof.

(2) In determining the reasonable annual rent under sub-section (1) the District Magistrate shall take into account—

(a) in the case of accommodation constructed after the 30th day of September, 1946, the cost of construction and maintenance of, and repairs to, the accommodation, its situation and any other matter which in the opinion of the District Magistrate is material, and

(b) in the case of accommodation falling within item (b) of sub-clause (1) (iii) of clause (g) of Section 3, the matters set out in clause (a) of Section 5.

(3) Subject to the result of any suit filed under sub-section (4) of Section 4, the amount fixed by the District Magistrate under this section shall be the reasonable annual rent of the accommodation.

Analogous Law.—See Section 3-A of Act III of 1947. The two sections are almost similar except the July 1, 1946, have been replaced by 30th day of September, 1946.

8. Unlawful charges not to be claimed or received.—(1) Subject to the provisions of this Act, no person shall be entitled to claim or to receive any rent in excess of the rent payable under this Act notwithstanding any agreement to the contrary.

(2) No person shall, in consideration of the grant, continuance or renewal of any tenancy, claim or receive any premium or other like sum in addition to the rent payable under this Act.

Analogous Law.—See Section 4 of Act III of 1947.

9. Control of letting.—(1) The officer commanding the station may, by general or special order, require a landlord to give intimation that any accommodation of which he is the landlord has fallen vacant and to let or not to let such accommodation to any person.

(2) Every tenant occupying accommodation shall, within seven days of his vacating such accommodation, give intimation thereof in writing to the officer commanding the station.

(3) The officer commanding the station may, on application being made to him by the landlord require a prospective tenant of any accommodation in respect of which an order has been made under this section to pay to the landlord an advance of rent equal—

(a) to one month's rent, where the accommodation is to be let on a monthly basis, and

(b) to one-half of the yearly rent where the accommodation is to be let on a yearly basis,

(4) In respect of any accommodation constructed after the 1st day of October, 1946, in respect of which he has to pass an order under sub-section (1), the officer commanding the station shall allot it to the owner if the owner, not being in occupation of any other house owned by him in the cantonment, genuinely requires such accommodation for his own residence.

Explanation I.—Any accommodation newly constructed shall be deemed to be vacant as soon as it is fit for occupation.

Explanation II.—For the purposes of this section “letting” includes sub-letting.

Analogous Law.—See Section 7 of Act III of 1947. The two sections are similar except that the Officer Commanding the station is the controlling authority instead of the District Magistrate.

Landlord Occupying—Effect.—If a landlord occupies the accommodation on the tenant vacating it and at the same time purchases his business, the accommodation shall be deemed to have fallen vacant and the occupation by the landlord without any allotment would be contrary to the provisions of the Act¹.

Analogous Law.—See Section 7-A of Act III of 1947.

10. Eviction of persons occupying accommodation in contravention of Section 9.—(1) Where in pursuance of an order of the officer commanding the station under sub-section (1) of Section 9 the vacancy of any accommodation is required to be reported and is not so reported, or where an order requiring any accommodation to be let or not to be let has been duly passed under that sub-section and the officer commanding the station believes, or has reason to believe, that any person has, in contravention of such order, occupied the accommodation or any part thereof, he may call upon the person in occupation to show cause, within such time as may be fixed by him, why he should not be evicted therefrom :

Provided that no order under this section shall be made if the officer commanding the station is of opinion that due to lapse of time or other causes it is inexpedient to do so.

(2) If such person fails to appear in reply to the notice served under sub-section (1), or, if he appears but fails to satisfy the officer commanding the station that the order under sub-section (1) of Section 9 was not duly passed and that he is entitled to remain in occupation of the accommodation, the officer commanding the station may, without prejudice to any other action which may be taken against him under this Act, or any other law for the time being in force, direct him to vacate the premises within such period as he may specify.

(3) Upon the making of an order under sub-section (2), the person against whom the order is made and any other person claiming under him shall vacate the accommodation and if the person does not vacate the accommodation within the time allowed or such extended period as the officer commanding the station may, on cause shown, allow, the officer commanding the station may evict, or cause to be evicted, the person or persons concerned and may use such force as may be necessary for carrying out the order and also put the person entitled under sub-section (1) of Section 9 in occupation of the accommodation.

(4) No appeal shall lie from any order passed by the officer commanding the station under this section, but the Central Govern-

1. *Sri Narain Dass v. Station Commander* 19b A L J 766=1955 N. U. C. 1152 (A).

ment or any person authorised by it in this behalf may revise the said order if it is satisfied that the officer commanding the station has acted illegally or with material irregularity or has wrongly refused to act, and may make such order in relation thereto as it thinks fit.

Analogous Law.—See Section 7-A of Act III of 1947.

11. Eviction of tenants occupying accommodation under Section 9.—(1) Where any tenant who is in occupation of any accommodation in pursuance of an order made under sub-section (1) of Section 9 is in arrears of rent for more than three months, the landlord may make an application to the munsif having territorial jurisdiction for an order of eviction of the tenant from the accommodation.

(2) Every application under sub-section (1) shall contain the following particulars, namely :

- (a) the name of the landlord and, where there are more landlords than one, the names of all the landlords ;
- (b) a sufficient description of the accommodation from which the tenant is to be evicted or a copy of the order of allotment ;
- (c) the arrears claimed and the rate at which they are claimed ;
- (d) where the rent has already been determined in a suit under sub-section (4) of Section 4, the fact that it has been so determined ;

and shall be verified in the manner prescribed for the verification of plaints in the Code of Civil Procedure, 1908 (Act V of 1908).

(3) On the making of an application under sub-section (1), the munsif shall, without unnecessary delay, cause a notice to be served on the tenant in the manner prescribed by rules under this Act requiring him to pay the amount of arrears within fifteen days of the service thereof or to show cause within the said period why an order evicting him from the accommodation be not passed against him.

(4) If within the time allowed in the notice under sub-section (3) the tenant pays into court the amount mentioned therein, the munsif shall dismiss the application and direct the amount to be deposited to be paid to the landlord in satisfaction of the arrears and shall make such order as to costs as may appear to him to be just and proper.

(5) Where the tenant has been duly served with a notice under sub-section (3) but fails to deposit the amount mentioned within the time allowed therein and does not file any objection thereto, the munsif shall, notwithstanding anything to the contrary contained in the Transfer of Property Act, 1882 (IV of 1882), make an order directing that the tenant be evicted from the accommodation and that he shall pay the costs of the application.

(6) As soon as may be after an order has been passed under sub-section (5) the munsif shall forward a copy of the same to the district magistrate and thereupon the district magistrate shall cause the tenant to be evicted from the accommodation, using or causing to be used such force as may be necessary for the purpose, and nothing contained in the Code of Civil Procedure, 1908 (Act V of 1908) shall apply to any such proceedings :

Provided that if the tenant at any time before his eviction deposits the amount due in the treasury or pays the landlord or the officer charged with the execution of the order for the delivery of possession,

the amount of arrears together with all the costs of the proceedings the tenant shall not be evicted from the accommodation and the district magistrate shall report the proceedings to the munsif who shall make an order quashing the proceedings :

Provided further that the district magistrate may, for sufficient reasons, allow such time as he may think fit to the tenant to pay the amount for which an order of eviction has been passed against him.

(7) Any order made under sub-section (5) or anything done or any action taken under sub-section (6) shall not be deemed in any way to affect the question of title to the property to which it relates.

Analogous Law—See Section 7-B of Act III of 1947.

12. Proceedings under Section 11 may be converted into suits in certain cases.—(1) Where a tenant appears in reply to a notice under sub-section (3) of Section 11 and files an objection, other than an objection as to the costs of the proceedings merely, the munsif shall inform the applicant that he may, subject to the payment within such time as may be specified of the court-fee in respect thereof, have the application treated as a plaint in a suit for the recovery of arrears of rent alone :

Provided that the tenant shall not be permitted to file any objection unless he deposits in Court the amount mentioned in the notice.

(2) If the applicant pays the necessary court-fee within the time allowed, the application shall be treated as a plaint and the proceedings as a suit and disposed of accordingly, but if no court-fee is so deposited, the proceedings shall be quashed, without prejudice to the right of the applicant to file, subject to any other law for the time being in force, a separate suit for ejectment and recovery of arrears.

Analogous Law—See Section 7-B (7) and (8) of Act III of 1947.

13. Special costs for frivolous or vexatious applications or objections.—Whenever the munsif finds that an application by the landlord under Section 11 or any objection filed by the tenant under Section 12 is frivolous or vexatious, he shall award, by way of special costs, to the tenant or the landlord, as the case may be, such sum not exceeding the amount of the claim as he may think fit.

Analogous Law—See Section 7-B (11) of Act III of 1947.

14. Restrictions on eviction.—No suit shall, without the permission of the district magistrate, be filed in any Civil Court against a tenant for his eviction from any accommodation except on one or more of the following grounds, namely :—

- (a) that the tenant has wilfully failed to make payment to the landlord of any arrears of rent within one month of the service upon him of a notice of demand from the landlord ;
- (b) that the tenant has wilfully caused or permitted to be caused substantial damage to the accommodation ;
- (c) that the tenant has, without the permission of the landlord, made or permitted to be made any such construction as in the opinion of the Court has materially altered the accommodation or is likely substantially to diminish its value ;

- (d) that the tenant has created a nuisance or has done any act which is inconsistent with the purpose for which he was admitted to the tenancy of the accommodation or which is likely to affect adversely and substantially the landlord's interest therein ;
- (e) that the tenant has sub-let the whole or any portion of the accommodation without the permission of the landlord ;
- (f) that the tenant has renounced his character as such or has denied the title of the landlord and the latter has not waived his right or condoned the conduct of the tenant.

Explanation.—For the purposes of clause (e), a person lodging another person in any accommodation which is a hotel or a lodging house shall not be deemed to have sub-let such accommodation.

Analogous Law.—See Section 3 of Act III of 1947.

Revision.—Unlike sub-sections (2) to (4) of Section 3 of Act III of 1947, there is no provision for revision and therefore no revision would lie either to the Commissioner or the Central Government.

15. Penalty.—Any person who contravenes any of the provisions of this Act or any order made in pursuance thereof shall be punishable, on conviction, with simple imprisonment for a term which may extend to six months or with fine, which may extend to one thousand rupees, or with both.

Analogous Law.—See Section 8 of Act III of 1947.

16. Attempts, etc.—Any person who attempts to contravene or abets a contravention of any order made under this Act shall be deemed to have contravened that order.

Analogous Law.—See Section 11 of Act III of 1947.

17. Offence by Companies.—(1) If the person contravening any order made under this Act is a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company as well as the company shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly :

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence was committed with the consent or connivance of, or is attributable to any neglect on the part of, any director or manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section—

- (a) “company” means any body corporate, and includes a firm or other association of individuals, and

(b) "director" in relation to a firm means a partner in the firm.

Analogous Law—See Section 12 of Act III of 1947.

18. Act to override other laws.—The provisions of this Act and of any orders or rules made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any such law.

Analogous Law.—See Section 10 of Act III of 1947.

19. Pending suits for eviction.—In all suits for eviction of a tenant from any accommodation pending on the date of commencement of this Act, no decree for eviction shall be passed except on one or more of the grounds mentioned in Section 14.

Analogous Law.—See Section 15 of Act III of 1947. This section would govern all suits pending on 16th January, 1952 in view of Ordinance II of 1952.

20. Execution of pending decrees for eviction.—Any decree for the eviction of a tenant from any accommodation passed before the commencement of this Act, in so far as it relates to the eviction of such tenant, shall not be capable of execution unless the decree is based on one or more of the grounds specified in Section 14 :

Provided that where the decree is based on the ground specified in clause (a) of Section 14, the decree shall not be capable of execution if the tenant pays to the landlord or deposits in court the arrears of rent due from him together with all the costs of the proceedings and also agrees to pay to the landlord the reasonable annual rent or the rent payable by him before the passing of the decree, whichever is lower.

Analogous Law.—See Section 14 of Act III of 1947. The two sections are similar excepting the previsos, which are different.

21. Orders under Act not to be questioned in any court.—Save as otherwise provided in this Act, no order made thereunder by the Government or the district magistrate or the officer commanding the station shall be called in question in any court.

Analogous Law.—See Section 16 of Act III of 1947.

22. Protection for action taken in good faith.—(1) No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done in pursuance of any order made under this Act.

(2) No suit or other legal proceeding shall lie against the Government for any damage caused or likely to be caused by anything which is in good faith done or intended to be done in pursuance of any order made under this Act.

Analogous Law.—See Section 13 of Act III of 1947.

23. Power to make rules.—(1) The Central Government may, by notification in the official *Gazette*, make rules to give effect to the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the manner in which any notice under this Act may be served ;

- (b) the procedure to be followed by district magistrates in the disposal of any proceedings under this Act;
- (c) the manner in which and the conditions subject to which officers commanding the station may exercise their powers under this Act.

24. Repeal of Ordinance II of 1952.—(1) The Uttar Pradesh Cantonments (Control of Rent and Eviction) Ordinance, 1952 (II of 1952), is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken in the exercise of any power conferred by or under the said Ordinance shall be deemed to have been done or taken in the exercise of the powers conferred by or under this Act, as if this Act were in force on the day on which such thing was done or action was taken.

THE CATTLE TRESPASS (U. P. AMENDMENTS) ACT, 1954

(U. P. Act No. VII OF 1954)

CONTENTS

Sections

1. Short title, extent and commencement.
2. Amendment of Section 26 of Act I of 1871.

Sections

3. Amendment of Sections 26 and 28 of Act I of 1871 in respect of certain areas.

SCHEDULE

ENGLISH TRANSLATION OF THE CATTLE TRESPASS (UTTAR PRADESH SANSHODHAN) ADHINIYAM, 1954

AS PASSED BY THE UTTAR PRADESH LEGISLATURE, AND ASSENTED TO BY THE GOVERNOR ON MARCH 25, 1954 AND PUBLISHED IN THE U. P. GAZETTE, EXTRAORDINARY, DATED MARCH 26, 1954

An Act to amend the Cattle Trespass Act, 1871 (I of 1871), in its application to U. P. for certain purposes

Whereas it is expedient to amend the Cattle Trespass Act, 1871 (I of 1877), in its application to U. P. for certain purposes;

It is hereby enacted as follows :

1. Short title, extent and commencement.—(1) This Act may be called the Cattle Trespass (U. P. Amendment) Act, 1954.

(2) It extends to the whole of Uttar Pradesh.

(3) It shall come into force at once.

Preliminary Note :—“Section 26 of the Cattle Trespass Act, 1871 provides that a fine not exceeding Rs. 50 may be imposed on the owner of cattle who allows them to trespass upon land and cause damage to its crop or produce. It is felt that the penalty provided under this section has failed to achieve its object and a more deterrent punishment is called for. It is accordingly proposed to raise the amount of fine to Rs. 250 with a minimum of Rs. 10 and also to provide for the awarding of imprisonment up to three months or both. The Bill also provides that where the State Government has so notified in respect of any area, the owner shall, for the second or subsequent offence, be punished with imprisonment up to three months and a fine not exceeding Rs. 500.” [vide Statement of Objects and Reasons, see the U. P. Gazette, Extraordinary, dated February, 5 1954].

2. Amendment of Section 26 of Act I of 1871.—For Section 26 of the Cattle Trespass Act, 1871, (hereinafter called the Principal Act) the following shall be substituted.

"26. Penalty for damage caused to land by cattle.—Any owner, keeper or attendant of cattle who through neglect or otherwise, damages or causes or permits to be damaged any land, or any crop or produce of land by allowing such cattle to trespass thereon, shall on conviction before a Magistrate, be liable to a fine not less than Rs. 10 but not exceeding Rs. 250 or to imprisonment for a term not exceeding three months or to both."

3. Amendment of Sections 26 and 28 of Act I of 1871 in respect of certain areas.—The State Government may, by notification in the official *Gazette*, with respect to any local area specified in the notification, declare that Section 26 of the Principal Act, as amended by this Act and Section 28 of the Principal Act, shall stand further amended and modified as specified in the Schedule and with effect from the date of the said declaration the Principal Act shall stand amended accordingly.

SCHEDULE

1. For Section 26 of the Principal Act, as amended by this Act, the following shall be substituted.—

"26. Penalty for damage caused to land by cattle.—Any owner, keeper or attendant of cattle, who through neglect or otherwise, damages or causes or permits to be damaged any land or any crop or produce of land by allowing such cattle to trespass thereon,

shall, on conviction before a Magistrate, be liable—

(a) for the first offence to a fine not less than Rs. 10 but not exceeding Rs. 250 or to imprisonment for a term not exceeding three months or to both,

(b) for the second or subsequent offence to an imprisonment for a term not exceeding three months and fine not exceeding Rs. 500."

2. For Section 28 of the Principal Act, the following shall be substituted.—

"28. Application of fines recovered under Sections 25, 26 or 27.—All fines recovered under Section 25, clause (a) of Section 26 or Section 27 may be appropriated in whole or in part as compensation for loss or damage proved to the satisfaction of the convicting magistrate."

THE UTTAR PRADESH CHARITABLE ENDOWMENTS (EXTENSION OF POWERS) ACT, 1950

(U. P. ACT NO XX OF 1950)

CONTENTS

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| 1. Short title and commencement. | 3. Order by State Government, if wastage of property proved. |
| 2. Notice to persons acting in administration. | 4. Action after the above order. |

AUTHORITATIVE ENGLISH TEXT OF THE UTTAR PRADESH CHARITABLE ENDOWMENTS (ADHIKARON KE VISTAR KA) ACT, 1950

An act to extend the provision of the Charitable Endowments Act, 1890, in its application to Uttar Pradesh for certain purposes.

Whereas it is expedient to provide for greater powers to the State Government to frame schemes for charitable endowments for educational purposes ;

It is hereby enacted as follows :

Prefatory Note:—For S. O. R. see *Gaz.*, d. Jan. 28, 1950, Pt. VII, pp. 9—10 : for discussion, see L. A. Pro. d. March 29, 1950, in Vol. LXX, pp. 25—36, d. July 3, 1950, in Vol. LXVII, p. 9, and L. C. Pro. d. Feb. 10 and 11, 1950, in Vol. XIV, pp. 247—254 and 268—284, d. June 24, 1950, in Vol. XVI, p. 13.

1. Short title and commencement.—(1) This Act may be called the Uttar Pradesh Charitable Endowments (Extension of Powers) Act, 1950.

(2) It shall extend to the whole of Uttar Pradesh.

(3) It shall come into force at once.

The Act was passed in Hindi by the Uttar Pradesh Legislative Assembly on March 29, 1950, and by the Uttar Pradesh Legislative Council on Feb. 11, 1950.

Received the assent of the President on May 31, 1950, under Article 201 of the Constitution of India and was published in *Gaz.*, d. July 1, 1950.

2. Notice to persons acting in administration.—(1) If, upon any representation made or otherwise it appears to the State Government that any property held in trust for the advancement of education is being wasted or mal-administered, it may by notice, require the person or persons acting in the administration thereof to show cause, within a time to be specified, why the same be not vested in the Treasurer of Charitable Endowments and a scheme for its administration be not settled.

(2) The notice required by sub-section (1) shall be served in such manner as may be specified.

3. Order by State Government, if wastage of property proved.—Where the person or persons served with the notice under the next preceding section fail to show cause within the time allowed, or the State Government is satisfied, after considering their explanation, if any, and making such enquiries as it may deem necessary, that the property is being wasted or mal-administered, it may make an order to that effect.

4. Action after the above order.—Upon the making of the order mentioned in Section 3 it shall be lawful for the State Government to proceed against such property under the Charitable Endowments Act, 1890, and the provisions of the said Act shall have effect as if—

(a) in sub-section (1) of Section 4 of the said Act the words “on application made as hereinafter mentioned, and” and “as may be agreed on between the appropriate Government and the person or persons making the application” were omitted;

(b) in sub-sections (1) and (2) of Section 5 of the said Act the words “on application made as hereinafter mentioned and with the concurrence of the person or persons making the application,” and the “comma” thereaster, were omitted; and

(c) for Section 6 of the said Act, the following was substituted :

"6. No scheme shall be settled, modified or substituted under the provisions of the foregoing sections, except after a draft thereof has been published in such manner as the appropriate Government may direct for the information of persons or interests likely to be affected thereby."

CHARITABLE ENDOWMENTS (U. P. AMENDMENT) ACT, 1952

(U. P. ACT NO XXXVII OF 1952)

CONTENTS

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| 1. Short title, extent and commencement. | 2. Addition of Section 6-A in Act II of 1890. |
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(AS PASSED BY THE U. P. LEGISLATURE)

An Act to amend the provisions of the Charitable Endowments Act, 1890, in its application to Uttar Pradesh for certain purposes.

Whereas it is expedient to amend the Charitable Endowments Act, 1890, in its application to Uttar Pradesh for the purposes hereinafter appearing;

It is hereby enacted as follows :

Prefatory Note :—"Government's attention has recently been drawn to cases where the management of schools and colleges functioning under a scheme settled under the Charitable Endowment Act II of 1890 were suffering from mal-administration and the property was being wasted. It is not possible either to amend, alter or substitute another scheme except with the concurrence of and on an application made by the person or persons acting as the administrators of the trust and the result has been a state of acute mismanagement.

It has therefore become necessary to amend the Charitable Endowment Act II of 1890 so that, where necessary, the scheme of management already settled under the provision of Act II of 1890, may be amended or substituted in order to save the schools and colleges from being mismanaged and the property from being wasted and mal-administrated" (Vide Statement of Objects and Reasons published in U. P. Gazette Extraordinary, dated September 13, 1952.)

1. Short title, extent and commencement.—(1) This Act may be called the Charitable Endowments (U. P. Amendment) Act, 1952.

(2) It shall extend to the whole of Uttar Pradesh.

(3) It shall come into force at once.

The Act was passed in Hindi by the Uttar Pradesh Legislative Assembly on September 23, 1952, and by the Uttar Pradesh Legislative Council on October 14, 1952.

Received the assent of the President on December, 10, 1952, and was published in *Gazette Extra d.* December 15, 1952.

2. Addition of Section 6-A in Act II of 1890. After Section 6 of the Charitable Endowments Act, 1890, the following shall be inserted as Section 6-A :

"6-A. (1) If the State Government is satisfied upon representation made or otherwise, that in any case, where any property has already vested in the Treasurer of Charitable Endowments under Section 4 and a scheme has been settled under Section 5 that the person or persons acting in the administration thereof are wasting or mal-administering the same, it may by notice require the person or persons to show cause why the scheme settled for administration be not modified or substituted by another scheme.

(2) The notice under sub-section (1) shall be served in such manner as may be specified.

(3) Where the person or persons served with the notice fail to show cause within the time allowed or the Government is satisfied after considering their explanation, if any, and making such enquiry as it may deem necessary that the property is being wasted or mal-administered it may, notwithstanding anything contained in Section 5 or 6, modify the scheme or substitute another scheme in its place."

THE UTTAR PRADESH CHILDREN ACT, 1951

(U. P. Act No. I of 1952)

CONTENTS

Sections	CHAPTER I PRELIMINARY	Sections
	1. Short title, extent and commencement.	22. Compensation for false and frivolous or vexatious information.
	2. Definitions.	
	CHAPTER II CHILDREN IN NEED OF CARE OR PROTECTION	CHAPTER IV YOUTHFUL OFFENDERS
	3. Power of Court in respect of children needing care or protection.	23. Bail of children.
	4. Sending of child having place of residence outside the jurisdiction of the Court.	24. Custody of children not released on bail.
	5. Power of the parent or guardian to bring child before Court.	25. Remand or committal to custody.
	6. Interim order by Court.	26. Attendance in Court of parent of child.
	CHAPTER III OFFENCES AGAINST CHILDREN AND THEIR PREVENTION	27. Sentences that may not be passed on child.
	7. Punishment for cruelty to children.	28. No proceeding under Chapter VIII of the Code of Criminal Procedure, 1898, against child.
	8. Causing or allowing child to beg.	29. Commitment of child to approved school.
	9. Penalty for being drunk while in charge of a child.	30. Power to discharge youthful offender or to commit him to suitable custody.
	10. Penalty for giving intoxicating drug or liquor to a child.	31. Power to order parent of child to pay fine.
	11. Penalty on selling cigarettes, etc. to children.	32. Detention in case of certain crimes by children.
	12. Seizure by police officer of any bidis, cigarettes, tobacco or smoking mixture in possession of child.	33. Methods of dealing with children charged with offences.
	13. Penalty for taking pawn from a child.	
	14. Allowing child to be in brothel.	CHAPTER V REFORMATION OFFICERS AND OTHER PERSONS ENTRUSTED WITH THE SUPERVISION OF CHILDREN AND YOUTHFUL OFFENDERS
	15. Causing or encouraging seduction etc.	34. Appointment of Reformation Officer.
	16. Young girls exposed to risk of seduction, etc. or cruelly treated.	35. Duties of Reformation Officers.
	17. Seduction or outrage of modesty.	36. Duties of other persons.
	18. Exploitation of child employees.	37. Death or incapacity of Reformation Officer or other person.
	19. Detention of child in place of safety.	
	20. Disposal of child by order of Court.	CHAPTER VI MAINTENANCE AND TREATMENT OF PERSONS SENT TO APPROVED SCHOOLS OR COMMITTED TO SUITABLE CUSTODY
	21. Warrant to search for child ill-treated.	38. Contribution of parent.
		39. Boarding out of children.
		40. Placing out on licence.
		41. Penalty for abetting escape of

Sections

- child or youthful offender.
42. Action by police with regard to escaped children.
43. Transfer from one approved school to another.
44. Discharge and transfer.
45. Period of retention.
46. Transfer between approved schools and schools of like nature in different parts of India.
47. Transfer of children of unsound mind or suffering from leprosy and other contagious diseases.

CHAPTER VII**APPROVED SCHOOLS AND OTHER INSTITUTIONS**

48. Establishment and certification of schools.
49. Management of schools.
50. Inspection of approved schools.
51. Power of inspectors.
52. Medical inspectors.
53. Power of State Government to withdraw certificate.
54. Resignation of certificate by manager.
55. Effect of withdrawal or resignation of certificate.
56. Disposal of inmates on withdrawal or resignation of certificate.
57. Auxiliary homes.
58. Liabilities manager.
59. Inspection of institutions for the reception of poor children.

CHAPTER VIII**POWERS AND FUNCTIONS OF COURTS HAVING JURISDICTION UNDER THE ACT**

60. Juvenile Court.
61. Powers of Juvenile Courts and other Courts.
62. Procedure when a Magistrate is not empowered to pass an order under this Act.
63. Joint trial of the child and adult.
64. Presence of persons in Juvenile Courts.

Sections

65. Withdrawal of persons from Juvenile Courts.
66. Dispensing with attendance of child.
67. Withdrawal of persons from Court when a child is examined as witness.
68. Factors to be taken into consideration in passing orders by Courts.

CHAPTER IX**GENERAL AND MISCELLANEOUS**

69. Minimum age for committal to approved schools.
70. Principles to be observed by Courts in dealing with children and young persons.
71. Prohibition against publication of certain matter in newspapers.
72. Reports of Reformation Officers and other reports to be treated confidential.
73. Presumption and determination of age.
74. Religious persuasion of persons to whom child is committed.
75. Continuation of proceedings against child on his attaining specified age.
76. *Repeal.*
77. *Repeal.*
78. Bond taken under this Act.
79. Appeal and revision.
80. Period of limitation after filing appeals.
81. Saving of jurisdiction of Civil Courts.
82. Power to amend orders.
83. Removal of disqualification pertaining to convictions.
84. Control over custodian of child.
85. Reformation Officers and persons authorized to be deemed to be public servants.
86. Protection of action taken under this Act.
87. Delegation of powers.
88. Power to make rules.

AUTHORITATIVE ENGLISH TEXT OF THE UTTAR PRADESH BALAK ADHINIYAM, 1951

An Act to consolidate and amend the law for the custody, protection, treatment and rehabilitation of children and for the custody, trial and punishment of youthful offenders and for the amendment of the Reformatory Schools Act, 1897 in its application to Uttar Pradesh.

Preamble.—Whereas it is expedient to provide for the custody, protection, treatment and rehabilitation of children and for the custody, trial, punishment of youthful offenders, and for the amendment of the Reformatory Schools Act, 1897 in its application to the Uttar Pradesh;

It is hereby enacted as follows :

Prefatory Note:—For S. O. R. see Gaz. d. Sep. 23, 1950; for discussion.

see L. A. Pro. d. Sep. 12, 1950 in Vol. LXXXII, pp. 87—96, d. Dec. 27, 1950, in Vol. LXXXVI, p. 112, d. March 13, 1951, in Vol. XCIII, pp. 96—97, d. Aug. 30 and 31, 1951 in Vol. XCVI, pp. 261—262 and 394—469 ; d. Sep. 27 and 28, 1951, in Vol. XCIX, pp. 390—419 and 206 ; and for L. C. Pro. d. Sep. 17 and 20, 1951 in Vol. XXIII, pp. 305 and 408—418, d. Sep. 25 and 26, 1951, in Vol. XXIV, pp. 92 and 115—170, d. March 7, 1952, in Vol. XXIV, p. 293.

CHAPTER 1

PRELIMINARY

1. Short title, extent and commencement.—(1) This Act may be called the Uttar Pradesh Children Act, 1951.

(2) It extends to the whole of the Uttar Pradesh.

(3) This section and Section 77 shall come into force at once.

(4) The State Government may, by notification in the official *Gazette*, direct that all or any of the remaining provisions of this Act shall come into force in any local area on such date or dates as may be specified in such notification.

(5) Notwithstanding the commencement of this Act in any local area, the State Government may by notification in the official *Gazette* exclude any class of children or youthful offenders from the operation of all or any of the provisions of this Act.

Commencement.—The Act received the assent of the President on 5th, Feb. 1952, and Sections 1 and 77 came into force on 19th Feb. 1952 when the Act was published in the *Gazette*.

The Act was passed in Hindi by the Uttar Pradesh Legislative Council on Sep. 26, 1951 and by the Uttar Pradesh Legislative Assembly on Sep. 28, 1951.

Received the assent of the President on Feb. 5, 1952, under Article 201 of the Constitution of India and was published in *Gaz. Extra*, d. Feb. 19, 1952.

2. Definitions.—In this Act unless there is anything repugnant in the subject or context :

(1) “approved School” means a school established or certified under this Act ;

(2) “brothel” means a building or place, or any part thereof, occupied or let or intended to be occupied or let, as a single tenement, for use by more than one person for the purposes of prostitution ;

(3) “Chief Inspector” means the Chief Inspector appointed under Section 50 ;

(4) “child” means a person under the age of sixteen years ;

(5) “fit person” in relation to the care of any child or youthful offender includes any society, institution or body corporate established for the reception or protection of poor children or the prevention of cruelty to children, which undertakes to bring up or to give facilities for bringing up any child or youthful offender entrusted to its care in conformity with the religion of its birth ;

(6) “guardian” in relation to a child or youthful offender includes any person who, in the opinion of the Court having cognizance of any proceedings in relation to the child or youthful offender or in which the child or youthful offender is concerned, has for the time being the actual charge of or control over the child or youthful offender ;

- (7) "Juvenile Court" means a Court established under sub-section (1) of Section 60 and includes a Court sitting in the manner provided by sub-section (2) of that section;
- (8) "public place" includes any public park, garden or railway station and any ground, building or premises to which the public for the time being have or are permitted to have access whether on payment or otherwise;
- (9) "place of safety" means any observation home or any orphanage, hospital, or any other suitable place or institution the occupier or manager of which is willing temporarily to receive a child; or where such observation home, orphanage, hospital or other suitable place or institution is not available in the case of a male child only, a police station in which arrangements are available or can be made or the safe keeping of a child separately from adult offenders;
- (10) "Reformation Officer" means an officer appointed under Section 34;
- (11) "prescribed" means prescribed by rules;
- (12) "street" includes any highway, and any public bridge, road, lane, footpath, square, court, alley or passage, whether a thoroughfare or not; and
- (13) "youthful offender" means any child who has been found to have committed an offence punishable with transportation or imprisonment.

Brothel.—The definition given in the Act is not confined to buildings, but also includes *places* used or intended to be used for prostitution. The word "place" is wide enough to include gardens, groves, lawns, open place, public or private. It is not necessary that the building may be actually used for purposes of prostitution, an intended use would also bring the building or place within the definition, but it is essential that the building or place should be occupied or let as a single tenement.

CHAPTER II

CHILDREN IN NEED OF CARE OR PROTECTION

3. Power of Court in respect of children needing care or protection.—(1) Any police officer or other person authorized in this behalf in the manner prescribed may bring before a Court any person apparently under the age of sixteen years who—

- (a) is found wandering and not having any home or settled place of abode, or visible means of subsistence, or is found wandering and having no parent or guardian, or having a parent or guardian who is incapable of exercising or does not ordinarily exercise proper care and guardianship over him; or
- (b) is found begging or receiving alms (whether or not there is any pretence of singing, playing, performing, offering anything for sale or otherwise) or being in any street, premises or place for the purposes of so begging or receiving alms; or
- (c) is found destitute, and whose parents or surviving parent, and in the case of an illegitimate child whose mother, or

other guardian are or is, undergoing a sentence of transportation or imprisonment ; or

- (d) is under the care of a parent or guardian who, by reason of criminal or drunken habits, is unfit to have the care of the child or who habitually neglects or cruelly ill-treats child ; or
- (e) frequents the company of any reputed thief ; or
- (f) is living, lodging or residing in a house or part of a house used by any prostitute for the purposes of prostitution or is otherwise in circumstances calculated to cause, encourage or favour his seduction or prostitution ; or
- (g) is otherwise likely to fall into bad association or to be exposed to moral danger, or to enter upon a life of crime :

Provided that where any such child has a parent or guardian who has actual charge or control over the child, the person or the Officer aforesaid, as the case may be, shall in the first instance make a report to the nearest Court and such Court may call upon such parent or guardian to show cause why the child should not during the pendency of the proceedings be removed from his care and may on suitable sureties being offered for the safety of such child and for his being brought before the Court, permit the child to remain in the actual charge of his parents or guardian or may order his removal till the Court passes orders under this Act.

Explanation—A child shall not be treated as coming within the description contained in sub-clause (f), if the house in which he is lodging or residing is the house of his mother, who is a prostitute.

(2) If the Court is satisfied on enquiry that such person is a child and is as described within the provisions of sub-section (1) and that it is expedient to deal with him the Court may either—

- (i) order him to be sent to an approved school or to the care of any fit person, whether a relative or not, who is willing to undertake the care until such child attains the age of 18 years or for such shorter period as may be specified ; or
- (ii) order his parent or guardian, if any, to enter into a recognizance to exercise proper care and guardianship for a specified period not exceeding three years ; or
- (iii) without making any other order, or in addition to making an order under either of the preceding paragraphs, make an order placing him for a specified period, not exceeding three years, under the supervision of a Reformation Officer or of some other person appointed for the purpose by the Court.

(3) If, after enquiry, the Court is satisfied that the child has been living by begging at the instance of and for the profit of any person who is a professional keeper of begging children, the Court may direct such person to appear before it and, after hearing him, may direct him to pay towards the cost of proceedings any amount not exceeding twenty-five rupees and such cost shall be realizable under the provisions of the Code of Criminal Procedure, 1898, as if it were a fine.

Apparently—Meaning.—In the context in which the word has been used it means “by appearance”. A police officer is authorised to take action under the Act, if a child “by appearance” is below sixteen years of age. It is not necessary to investigate into the age of the child.

Fit person.—See Section 2 (5).

4. Sending of child having place of residence outside the jurisdiction of the Court.—In the case of a child whose ordinary place of residence lies outside the jurisdiction of the Court before which it is brought, the Court may, if satisfied after due inquiry that it is expedient so to do, send the child back to a relative or a fit person who is fit and willing to receive him and exercise proper care and control of him.

5. Power of the parent or guardian to bring child before Court.—Where the parent or guardian of a child applies to a Court that he is unable to control the child and prays that the child be sent to an approved school, the Court, if satisfied after enquiry that it is expedient so to deal with the child, and that the parent or guardian understands the result which will follow, may order the child to be sent to any such school or may order him to be placed for a specified period, not exceeding three years, under the supervision of a Reformation Officer.

6. Interim order by Court.—Where at any stage of a proceeding under this Chapter the Court so considers it expedient in the interest of the child, it may make such interim order as it thinks fit for the detention or continued detention of the child in a place of safety, or for his committal to the care of a fit person who is willing to take care of him.

CHAPTER III

OFFENCES AGAINST CHILDREN AND THEIR PREVENTION

7. Punishment for cruelty to children.—(1) Whoever having the actual charge of or control over a child abandons, exposes or wilfully neglects, assaults or illtreats such child in a manner likely to cause such child unnecessary suffering or injury to his health shall be punishable with imprisonment of either description for a term which may extend to six months or with fine which may extend to two hundred rupees or with both.

(2) For the purposes of this section injury to health includes injury to, or loss of, sight or hearing and injury to limb or organ of the body and any mental derangement, and a parent or other person legally liable to maintain a child shall be deemed to have neglected him in a manner likely to cause injury to his health if he wilfully fails to provide adequate food, clothing, medical aid or lodging for the child.

(3) A person may be convicted of an offence under this section notwithstanding that the actual suffering or injury to health was obviated by the action of another person.

(4) Nothing in this section shall be construed to take away or affect the right of any parent, teacher or other person having the lawful control or charge of a child to administer punishment to such child.

Scope.—This section punishes cruelty to children, by a person who has the actual charge or control over them. This may be due to act of wilful omission such as neglect or wilful commission such as assault, and both are punishable. This however does not take away the right of a parent, teacher or other person having the lawful control or charge of a child to administer punishment to such child.

8. Causing or allowing child to beg.—(1) Whoever for his own profit causes any child or having the actual charge of or control over a child allows that child to be in any street, premises or place for the purpose of begging or receiving alms, or of inducing the giving of alms whether or not there is any pretence of singing, playing, performing, offering anything for sale or otherwise shall be punishable with imprisonment of either description for a term which may extend to three months or with fine which may extend to one hundred rupees or with both.

(2) The State Government may, by notification in the official *Gazette*, exempt from liability to punishment under this section any class of persons in any district or place where this Act may be in operation.

Scope.—This section punishes person who employ children for begging or receiving alms, even if it is under the pretence of singing, playing, performing, offering anything for sale or otherwise.

9. Penalty for being drunk while in charge of a child.—If any person is found drunk in any public street or other public place whether a building or not while having the charge of a child apparently under the age of seven years and if such person is incapable by reason of his drunkenness of taking due care of the child, he may be arrested and shall, if the child is under that age, be punishable with fine which may extend to fifty rupees.

Explanation.—For the purposes of this section a child shall be deemed to be under the age of seven if it appears to the Court to be under that age unless the contrary is proved.

10. Penalty for giving intoxicating drug or liquor to a child.—Whoever in any public street or other public place, whether a building or not causes to be given to any child any intoxicating drug or liquor except upon the order of duly qualified medical practitioner, or in case of sickness or other urgent cause, shall be punishable with fine, which may extend to fifty rupees.

11. Penalty on selling cigarettes, etc. to children.—If any person sells to a person apparently under the age of 12 years any cigarette, cigarette paper, bidis, tobacco or smoking mixture, whether for his own use, or not, he shall be liable in the case of the first offence to a fine not exceeding Rs. 25 and in the case of the second or subsequent offence to a fine not exceeding Rs. 100.

Explanation.—For the purposes of this section and the next following section, the expression "cigarette" includes cut tobacco rolled up in paper, tobacco leaf or other material in such form as to be capable of immediate use for smoking.

12. Seizure by police officer of any bidis cigarettes, tobacco or smoking mixture in possession of child.—It shall be the duty of a police officer to seize any bidis, cigarettes, tobacco or smoking mixture in the possession of a child whom he finds smoking in any street or

public place and any bidis, cigarettes, tobacco or smoking mixture so seized shall be forfeited to State Government and every such police officer shall be authorized to search any child so found smoking but not a girl.

13. Penalty for taking pawn from a child.—Whoever takes an article in pawn from a child whether offered by that child on his own behalf or on behalf of any other person shall be punishable with imprisonment of either description for a term which may extend to one month or with fine which may extend to one hundred rupees or with both.

14. Allowing child to be in brothel.—Whoever having the actual charge of, or control over, a child between the ages of four and sixteen allows or permits that child to reside in or frequent a brothel shall be punishable with imprisonment of either description for a term which may extend to two years or with fine which may extend to one thousand rupees or with both.

15. Causing or encouraging seduction, etc. (1) Whoever having the actual charge of, or control over, a girl under the age of eighteen years causes or encourages the seduction (which shall include inducement to indulge in immoral behaviour) or prostitution of that girl or causes or encourages any one other than her husband provided his wife has attained the age of fourteen years to have sexual intercourse with her shall, on conviction be punished with imprisonment of either description for a term which may extend to two years or with fine which may extend to one thousand rupees or with both.

(2) For the purposes of this section a person shall be deemed to have caused or encouraged the seduction of a girl or to have induced her to behave immorally if he has knowingly allowed the girl to consort with, or to enter or continue in the employment of, any prostitute, or person of known immoral character.

16. Young girls exposed to risk of seduction, etc. or cruelly treated.—If upon a complaint it appears to the Court that a girl under the age of sixteen is being treated with cruelty by her parent or guardian or that such girl with or without the knowledge of her parent or guardian is exposed to the risk of seduction or prostitution or of living a life of prostitution the Court may direct the parent or guardian to enter for a specific period into a recognizance to exercise due care and supervision in respect of such girl.

17. Seduction or outrage of modesty. Whoever seduces or indulges in immoral behaviour with a girl under the age of sixteen years shall, on conviction, be punished with imprisonment of either description for a term which may extend to two years or with fine which may extend to one thousand rupees or with both.

Analogous Law.—See Sections 354 and 368-A of the Indian Penal Code.

Scope.—This section punishes seduction of and immoral behaviour towards a girl under sixteen years of age. The accused can be punished under this section in addition to his being punished under the Penal Code.¹

18. Exploitation of child employees.—(1) Whoever secures a child ostensibly for the purpose of menial employment or for labour in

1. *Mushtaq v. State*, 1954 A 580.

a dock, factory or other establishment, but in fact exploits the child for his own ends, withholds or lives on his earnings, shall on conviction, be punished with fine which may extend to one thousand rupees.

(2) Whoever secures a child ostensibly for any of the purposes mentioned in sub-section (1), and exposes such child to the risk of seduction, sodomy, prostitution or other immoral conditions, shall on conviction, be punished with imprisonment of either description for a term which may extend to two years or with fine which may extend to one thousand rupees or with both.

(3) Any person who knowingly avails himself of the labour of a child exploited in the manner referred to in sub-section (1) or (2) or for whose immoral gratification such child is used shall be liable as an abettor.

19. Detention of child in place of safety.—(1) Any police officer, not below the rank of Sub-Inspector or a person authorized in the manner prescribed may take to a place of safety any child in respect of whom an offence punishable under this Act or under Chapter XVI of the Indian Penal Code, 1860⁹, has been or there is reason to believe has been or is likely to be committed.

(2) A child so taken to a place of safety and also any child who seeks refuge in a place of safety may be detained there until he can be brought before the Court but such detention shall not in the absence of a special order of the Court, exceed a period of twenty-four hours exclusive of the time necessary for the journey from the place of detention to the Court and the Court may make such order as is mentioned in the next following sub-section or may cause the child to be dealt with as circumstances may admit and require until the charge made against any person in respect of any offence as aforesaid with regard to the child has been determined by the conviction, discharge or acquittal of such person.

(3) Where it appears to the Court that an offence as aforesaid has been or is likely to be committed in respect of any child who is brought before the Court and that it is expedient in the interests of the child that an order shou'd be made under this sub-section, the Court may make such order as circumstances may admit and require for the care and detention of the child until a reasonable time has elapsed for a charge to be made against some person for having committed the offence and if a charge is made against any person within that time, until the charge has been determined by the conviction, discharge or acquittal of that person and in case of conviction for such further time not exceeding one month, as the Court which convicted may direct and any such order may be carried out notwithstanding that any person claims the custody of the child.

20. Disposal of child by order of Court.—(1) Where any person having the actual charge of or control over a child has been—

- (a) convicted of committing in respect of such child an offence punishable under this Act or under Chapter XVI of the Indian Penal Code, 1860, or
- (b) committed for trial for any such offence, or
- (c) bound over to keep the peace towards such child by any Court,

that Court may either at the time when the person is so convicted, committed for trial or bound over or at any other time, order that the child be taken out of the charge and control of the person so convicted, committed for trial or bound over and be committed to the care of a relative of the child or other fit person named by the Court (such relative or other person being willing to undertake such care) until he attains the age of eighteen years or for any shorter period and that Court or any Court of like jurisdiction may, of its own motion or on the application of any person, from time to time by order renew, vary and revoke any such order.

(2) The Court which makes an order committing a child to the care of a relative or other fit person under this section may require such relative or other person to execute a bond, with or without sureties, to be responsible for the good behaviour of the child and for the observance of such other conditions as the Court may impose for securing that the child may lead an honest and industrious life and in addition order that the child be placed under the supervision of person named by the Court.

(3) If the child has a parent or legal guardian, no order shall be made under this section unless—

- (i) the parent or legal guardian has been convicted of or committed for trial for the offence or has been bound over to keep the peace towards the child or cannot be found, or
- (ii) the Court has reason to believe that the parent or legal guardian has either been party or privy to the offence or has by any act or omission facilitated the offence or is otherwise unfit to have the care of the child :

Provided that if the Court thinks fit, it may, on such parent or guardian giving an undertaking with or without sureties in a prescribed form to the Court allow such child to remain in the custody of such parent or legal guardian subject to the supervision of a person named by the Court.

(4) Every order under this section shall be in writing and any such order may be made by the Court in the absence of the child and the consent of any person to undertake the care of the child in pursuance of any such order shall be taken in such manner as the Court may think sufficient to bind him.

(5) Where an order is made under this section and the conviction or order binding the person to keep the peace is set aside or the person is acquitted, the order shall forthwith be void except with regard to anything that may have been lawfully done under it.

(6) The Court, instead of ordering the child to be committed to the care of a relative or other fit person, may order that the child shall be sent to an approved school.

21. Warrant to search for child ill-treated.—(1) If it appears to a Magistrate duly empowered under this Act from information on oath or solemn affirmation laid by any person who in the opinion of the Magistrate is acting in the interests of a child that there is reasonable cause to suspect that—

- (a) the child has been or is being wilfully ill-treated or neglected in any place within its jurisdiction in a manner likely to

cause the child unnecessary suffering or to be injurious to his health ; or

- (b) an offence punishable under this Act or under Chapter XVI of the Indian Penal Code, 1860, has been or is being committed in respect of the child,

the Magistrate may issue a summons in the first instance against the person or persons in whose care, custody or control such child is, to produce forthwith the said child in Court, or may issue a warrant authorizing any police officer named therein to search for such child and if it is found that he has been or is being wilfully ill-treated or neglected in the manner aforesaid or that any offence as aforesaid has been or is being committed in respect of the child to take him to and detain him in a place of safety until he can be brought before the Magistrate, or authorizing any police officer to remove the child with or without search to a place of safety and detain him there until he can be brought before the Magistrate and the Magistrate before whom the child is brought may commit him to the care of a relative or other fit person in like manner as if the person in whose charge or control he was committed for trial for an offence punishable under this Act :

Provided that if the said child is in the custody or control of a parent or guardian who being a female does not according to the customs and manners of the country appear in public, the Magistrate shall ordinarily issue a summons and the person to whom such summons is issued shall be deemed to have complied with the summons if instead of personally attending in Court she causes the said child to be produced in Court

(2) A Magistrate issuing a warrant under this section may in his discretion by the same warrant direct that any person accused of any offence in respect of the child be apprehended and brought before him, or direct that, if such person executes a bond with sufficient sureties for his attendance before the Magistrate at a specified time and thereafter until otherwise directed by the Magistrate, the officer to whom the warrant is directed shall take such security and shall release such person from custody.

(3) The police officer executing the warrant shall be accompanied by the person laying the information if such person so desires, and may also if the Magistrate by whom the warrant is issued so directs, be accompanied by a duly qualified medical practitioner.

(4) In any information or warrant under this section the name of the child shall be given if known.

22. Compensation for false and frivolous or vexatious information.—(1) If any case in which an information has been laid by any person under the provisions of Section 21 the Magistrate, after such inquiry as he may deem necessary is of opinion that such information was false and either frivolous or vexatious the Magistrate may for reasons to be recorded in writing direct that compensation to such an amount not exceeding five hundred rupees as he may determine be paid by such informer to the person against whom the information was laid.

(2) Before making any order for the payment of compensation, the Magistrate shall call upon the informer to show cause why he

should not pay compensation and shall consider any cause which such informer may show.

(3) The Magistrate may by the order directing payment of the compensation further order that in default of payment the person ordered to pay such compensation shall suffer simple imprisonment for a period of forty-five days.

(4) When any person is imprisoned under sub section (3) the provisions of Sections 68 and 69 of the Indian Penal Code, 1861, shall, so far as may be, apply.

(5) No person who has been directed to pay compensation under this section shall by reason of such order be exempted from any civil or criminal liability in respect of the information given by him but any amount paid as compensation shall be taken into account in any subsequent civil suits relating to such matter.

(6) An informer who has been ordered to pay compensation exceeding fifty rupees may appeal from the order as if such informer had been convicted on a trial held by the Magistrate directing the payment of compensation.

(7) When an order for the payment of compensation is made in a case which is subject to appeal under sub-section (6) the compensation shall not be paid to the person ordered to receive it before the period allowed for the presentation of the appeal has elapsed or if an appeal is presented before the appeal has been decided and where such order is made in a case which is not subject to appeal the compensation shall not be paid before the expiration of one month from the date of the order.

CHAPTER IV YOUTHFUL OFFENDERS

23. Bail of children.—(1) When a person apparently under the age of sixteen years is arrested for a non-bailable offence and cannot be brought forthwith before a Court, the officer in charge of the police station to which such person is brought may, in any case and shall unless the offence is one of culpable homicide or is an offence punishable with death or transportation, release him on bail if sufficient security is forthcoming unless, for reasons to be recorded in writing, the officer believes that such release would bring him into association with any reputed criminal or expose him to moral danger or that his release would defeat the ends of justice :

Provided that where a girl apparently under the age of sixteen years is arrested the officer in charge of a police station who has made the arrest or before whom the girl is brought shall release her at once if any person who is a relative of the girl or a society or institution of the same religious persuasion as the girl, who in his opinion is a sufficient and suitable surety enters into a bond for such sum of money as the officer considers sufficient to produce her before the Court or to appear in her stead if required at the police station.

(2) For the purposes of this section the expression "relative", means parents, grand parents, brothers, sisters, uncles, aunts and first cousins.

24. Custody of children not released on bail.—Where a person apparently under the age of sixteen years having been arrested is not released under Section 23 or otherwise, the officer in charge of the police station shall cause him to be detained in the prescribed manner until he can be brought before a Court :

Provided that the period of detention shall in no case, in the absence of the special order of a Court, exceed twenty-four hours, exclusive of the time necessary for the journey from the place of arrest to the court.

25. Remand or committal to custody.—A Court, on remanding or committing for trial a child who is not released on bail, shall order him to be detained in the prescribed manner.

26 Attendance in Court of parent of child.—(1) Where a child is charged with any offence or is brought before a Court on an application for an order to send him to an approved school, his parent or guardian may, in any case, and shall if he can be found and resides within a reasonable distance, be required to attend at the Court before which the case is heard during all the stages of the proceedings unless the Court is satisfied that it would be unreasonable to require his attendance.

(2) Where a child is arrested the officer in charge of the police station to which he is brought shall require the parent or guardian of the child if he can be found, to attend the Court before which the child shall be produced.

(3) The parent or guardian whose attendance shall be required under this section shall be the parent or guardian having the charge of or control over the child :

Provided that if such parent or guardian is not the father, the attendance of the father may also be required.

(4) The attendance of the parent of a child shall not be required under this section in any case where the child was, before the institution of the proceedings, removed from the custody or charge of his parent by an order of a Court.

(5) Nothing in this section shall be deemed to require the attendance of the mother or the female guardian of a child if such mother or female guardian does not, according to custom, appear in public, but any such mother or female guardian may appear before the court by a pleader or agent.

27. Sentences that may not be passed on child.—Notwithstanding anything to the contrary contained in any law, no Court shall sentence a child to death or transportation or imprisonment for any term or commit him to prison in default of payment of fine :

Provided that a child who is twelve years of age or upwards may be committed to prison when the Court certifies that he is of so unruly, or of so depraved a character that he is not fit to be sent to an approved school and that none of the other methods in which the case may legally be dealt with is suitable.

Scope.—This section abolishes the punishment of death or transportation of life as far as a child is concerned. He is, instead, to be sent to an approved school, except in cases where he is 12 years of age or upwards and the Court certifies that he is of so unruly or of so depraved a character that he is not fit to be sent to an approved school, he may be sent to prison.

28. No proceeding under Chapter VIII of the Code of Criminal Procedure, 1898 against child.—Notwithstanding anything contained in the Code of Criminal Procedure, 1898, no proceedings shall be instituted and no order shall be passed against a child under Chapter VIII of the said Code.

29. Commitment of child to approved school.—(1) Where a child is found to have committed an offence punishable with transportation or imprisonment, the Court, if satisfied on inquiry that it is expedient so to deal with the child, may order him to be sent to an approved school for such period of stay as will not exceed beyond the time when the child will attain the age of 18 years or for a shorter period, the reasons for such period to be recorded in writing.

(2) Where prior to the commencement of this Act a youthful offender has been sentenced to transportation or imprisonment, the State Government may direct that in lieu of undergoing or completing such sentence he shall, if under the age of sixteen years, be sent to an approved school, and thereupon the offender shall be subject to all the provisions of this Act as if he had been originally ordered to be detained in such school.

Scope—This section makes provision for sending a child to an approved school in case he is found to have committed an offence punishable with transportation or imprisonment. If a person is arrested in connection with offences under the Act and he is a child on that date, he can get the benefit of the Act, otherwise he must be a child on the date on which an application oral or written is made for extending the benefits of the section².

30. Power to discharge youthful offender or to commit him to suitable custody.—(1) A Court may, if it thinks fit, instead of directing any youthful offender to be detained in an approved school, order him to be—

(a) discharged after due admonition ; or

(b) released on probation of good conduct and committed to the care of his parent or guardian or other adult relative or other fit person on such parent, guardian, relative or person executing a bond, with or without sureties, as the Court may require, to be responsible for the good behaviour of the youthful offender for any period not exceeding three years and for the observance of such other conditions as the Court may impose for securing that the youthful offender may lead an honest and industrious life.

The Court may order that the youthful offender released under this clause may be placed under the supervision of a *Reformation Officer* or of some other person appointed for the purpose by the Court.

(2) If it appears to the Court on receiving a report from the *Reformation Officer* or otherwise that the offender has not been of good behaviour during the period of the probation, it may after making such inquiry as it thinks fit order the offender to be detained in an approved school.

31. Power to order parent of child to pay fine.—(1) Where a child is found to have committed an offence punishable with fine and

2. *Mushtaq v. State*, 1954 A 580 = 1954 A L J 256 = 1954 Cr L J 1288 = 1954 A W R 191 (11)

the Court is of opinion that the case would be best met by the imposition of a fine, whether with or without any other punishment the Court may in any case and shall, if the offender is a child under twelve years of age, order that the fine be paid by the parent or guardian of the child unless the Court is satisfied that the parent or guardian cannot be found or that he has not conducted to the commission of the offence by neglecting to exercise due care of the child.

(2) An order under this section may be made against a parent or guardian who, having been required to attend, has failed to do so, but save as aforesaid, no such order shall be made without giving the parent or guardian an opportunity of being heard.

(3) Where a parent or guardian is directed to pay a fine under this section, the amount may be recovered in accordance with the provisions of the Code of Criminal Procedure, 1898.

(4) A parent or guardian may appeal against any such order as if it had been an order passed in proceedings against himself.

Scope.—This section lays down that if a child commits an offence which is punishable with fine, and the court decides to impose a fine, it may be realised but if the child is less than 12 years of age it shall be realised from his parent or guardian, after giving him an opportunity of being heard unless the Court is satisfied that he cannot be found or he has not conducted to commission of offence by his negligence to exercise due care.

32. Detention in case of certain crimes by children.—(1) When a child is found to have committed an offence of so serious a nature that the Court is of opinion that no punishment which under the provisions of this Act it is authorized to inflict is sufficient, the Court shall order the offender to be kept in safe custody in such place or manner as it thinks fit and shall report the case for the orders of the State Government.

(2) Notwithstanding the provisions of Section 13 the State Government may order any such child to be detained in such place and on such conditions as it thinks fit, and while so detained the child shall be deemed to be in legal custody :

Provided that no period of detention so ordered shall exceed the maximum period of imprisonment to which the child could have been sentenced for the offence committed.

33. Methods of dealing with children charged with offences.—Where a child charged with any offence is tried by any Court, and the Court is satisfied of his guilt the Court shall, before passing orders, take into consideration the manner in which, under the provisions of this or any other Act enabling the Court to deal with the case, the case should be dealt with, namely, whether

- (a) by discharging the offender after due admonition ; or
- (b) by committing the offender to the care of his parent, guardian, other adult relative or other fit person on such parent, guardian, relative or person executing a bond to be responsible for his good behaviour ; or
- (c) by so discharging the offender and placing him under the supervision of a person named by the Court ; or
- (d) by committing the offender to the custody of any suitable person, whether a relative or not, who is willing to undertake the care of the offender ; or

- (e) by releasing the offender on probation of good conduct ; or
- (f) by sending the offender to an approved school ; or
- (g) by ordering the offender to pay a fine ; or
- (h) by ordering the parent or guardian of the offender to pay a fine ; or
- (i) by dealing with the case in any other manner in which it may be legally dealt with ; or
- (j) when the offender is a child of twelve years of age or upwards by sentencing him to imprisonment :

Provided that nothing in this section shall be construed as authorizing the Court to deal with any case in any manner in which it could not deal with the case but for this section.

CHAPTER V

REFORMATION OFFICERS AND OTHER PERSONS ENTRUSTED WITH THE SUPERVISION OF CHILDREN AND YOUTHFUL OFFENDERS

34. Appointment of Reformation Officer.—A Reformation Officer shall be—

- (a) any person appointed to be a Reformation Officer by the State Government, or
- (b) any person provided for this purpose by a society recognized in this behalf by the State Government, or
- (c) in any case where so necessary any other person appointed from time to time by the Court subject to any general or special orders of the State Government.

35. Duties of Reformation Officers.—A Reformation Officer shall, subject to the rules made under this Act and to the directions of the Court—

- (a) visit or receive visits from the child or youthful offender at such reasonable intervals as may be specified in the order passed by the Court or subject thereto, as the Reformation Officer may think fit ;
- (b) see that the relative of the child or the youthful offender, as the case may be, or other person to whose care such child or youthful offender is committed, observe the conditions of the bond ;
- (c) report to the Court as to the behaviour of the child or the youthful offender, as the case may be ;
- (d) advise, assist and befriend the child or the youthful offender, and when and where necessary, endeavour to arrange for his education or to find him suitable employment ; and
- (e) perform any other duty which may be prescribed, or which the Court orders.

36. Duties of other persons.—Any person under whose supervision a child or youthful offender has been placed by an order of a Court under the provisions of Chapters II and III of this Act shall, subject to rules made in this behalf, have, so far as it may be possible, the same duties as a Reformation Officer under the preceding section.

37. Death or incapacity of Reformation Officer or other person.—Where the Reformation Officer or other person named in an order of a Court under the provisions of Chapters II and III of this Act placing a child or youthful offender under supervision, has died or is unable for any reason to carry out his duties, or where it is made to appear that it is desirable that another person should be appointed in the place of that officer or person, the Court may appoint another Reformation Officer or person to act in his place.

CHAPTER VI

MAINTENANCE AND TREATMENT OF PERSONS SENT TO APPROVED SCHOOLS OR COMMITTED TO SUITABLE CUSTODY

38. Contribution of parent.—(1) The Court which makes an order for the detention of a child or youthful offender in an approved school or suitable custody of a relative or other fit person may make an order to the parent or such other person liable to maintain the child or youthful offender to contribute to his maintenance if able to do so in the prescribed manner.

(1-A) The Court before making any order under sub-section (1) shall enquire into the circumstances of the parent or other person liable to maintain the child or youthful offender and shall record the evidence, if any, in the presence of the parent or such other person, as the case may be, or when his personal attendance is dispensed with in the presence of his pleader.

(2) An order made under this section may be varied by the Court from time to time.

(3) The persons liable to maintain a child or youthful offender shall for the purposes of sub-section (1) include any person in whose keeping the mother of the child or youthful offender is at the time when any order as aforesaid is made whether he is his putative father or not and in the case of illegitimacy his putative father :

Provided that where the child or youthful offender is illegitimate and an order for his maintenance has been made under Section 488 of the Code of Criminal Procedure, 1898, the Court shall not ordinarily make an order for contribution against the putative father, but may order the whole or any part of the payments accruing due under the said order for maintenance to such person or persons as may be named by the Court to be applied by him or them, as the case may be, towards the maintenance of the child or the youthful offender.

(3-A) Where a parent or other person has been ordered under this section to contribute to the maintenance of a child or youthful offender, he shall give notice of any change of address to the Court which passed the order and if he fails to do so without reasonable excuse he shall be punishable with a fine which may extend to twenty-five rupees.

(4) An order under this section may be enforced in the same manner as an order under Section 488 of the Code of Criminal Procedure, 1898.

(5) A child including youthful offender in remuneration or possessing property yielding income shall pay such proportion of his earnings as may be ordered by the State Government towards his maintenance.

44. Discharge and transfer.—(1) The State Government may at any time discharge a child or youthful offender from the care of any person to whose care he is committed under this Act, either absolutely or on such conditions as the State Government approve.

(2) The State Government may at any time order a child or youthful offender to be discharged from an approved school, either absolutely or on such conditions as the State Government approve.

(3) The State Government may order a youthful offender over the age of fifteen years detained in an approved school to be transferred to a Borstal institution established under the United Provinces Borstal Act, 1938, in the interest of discipline or for other special reasons :

Provided that the total period of detention of such youthful offender shall not be increased by such transfer.

(4) Upon the transfer of a youthful offender to a Borstal institution under the preceding sub-section, the provisions of the United Provinces Borstal Act, 1938, shall apply to such offender as if he had been originally ordered to be detained in a Borstal institution under that Act.

45. Period of retention.—The period for which a child or youthful offender is to be detained in an approved school shall be specified in the order in pursuance of which he is sent there and shall be such period not less than two years in the case of a youthful offender who at the time of the order is over fifteen years and three years in the case of any other youthful offender as the Court may deem proper for his teaching and training but not in any case extending beyond the time when he will in the opinion of the Court attain the age of eighteen years.

Youthful Offender.—has been defined by Section 2 (13), while a child has been defined by Section 2 (4). This section places a limit to the detention of a youthful offender or a child, who can be detained for two years or three years respectively, but in no case for a period extending beyond the time that he will attain the age of eighteen years.

46. Transfer between approved schools and schools of like nature in different parts of India.—(1) The State Government may, in consultation with the manager of any approved school, consent to the transfer to that school of any person under the age of eighteen years in respect of whom an order has been made by competent authority in any other part of India of the nature of an order under this Act or the Reformatory Schools Act, 1897, for sending such person to an approved school or a reformatory school or any school of a like nature.

(2) The State Government may direct any child or youthful offender to be transferred from any approved school to any school of a like nature in any other part of India in respect of which similar provision is made by the Government of that part under any law in force therein :

Provided that no child or youthful offender shall be transferred under this section to any other State without the consent of the Government of that State.

47. Transfer of children of unsound mind or suffering from leprosy and other contagious diseases.—(1) Where it appears to the State Government that any child kept in an approved school or in the care of a fit person under any order of a Court is a leper or is suffering from a disease which is declared by the State Government in the manner prescribed to be contagious (hereinafter called a contagious disease), the State Government may, by an order setting forth the grounds of belief that the child is a leper or is suffering from a contagious disease, order his removal to a leper asylum or other place of safe custody, there to be kept and treated as the State Government directs during the remainder of the term for which he has been ordered to be kept or, if on the expiration of that term it is certified by a medical officer that it is necessary for the safety of the child or of others that he should be further kept under medical care or treatment, then until he is discharged according to law.

(2) Where it appears to the State Government that any child kept in an approved school or in the care of a fit person under any order of Court, is of unsound mind, the State Government may, by an order setting forth the grounds of belief that the child is of unsound mind, order his removal to a mental hospital or other place of safety there to be kept and treated as the State Government directs during the remainder of the term for which he has been ordered to be kept or, if on the expiration of that term it is certified by a medical officer that it is necessary for the safety of the child or of others that he should be further kept under medical care or treatment, then until he is discharged according to law.

(3) Where it appears to the State Government that the child has become of sound mind, or is cured of leprosy, or of the contagious disease, the State Government shall, by an order directed to the person having charge of the child if still liable to be kept in custody, send him to the approved school or fit person from where he was removed, or if the child is no longer liable to be kept in custody, order him to be discharged.

(4) The provisions of Section 31 of the Indian Lunacy Act, 1912, and Section 14 of the Lepers Act, 1898, as the case may be, shall apply to every child confined in a mental hospital or leper asylum under sub-section (1) or (2) after the expiration of the period for which he was ordered to be kept; and the time during which a child is confined in a mental hospital or leper asylum under that sub-section shall be reckoned as part of the period for which he may have been ordered by the Court to be kept:

Provided that where the removal of a child due to unsoundness of mind or leprosy is immediately necessary it shall be open to the authorities of the institution in which the child is kept to apply to a Court having jurisdiction under the Indian Lunacy Act, 1912, or the Lepers Act, 1898, as the case may be, for an immediate order of committal to mental hospital or a leper asylum until such time as the orders of the State Government can be obtained in the matter.

CHAPTER VII

APPROVED SCHOOLS AND OTHER INSTITUTIONS

48. Establishment and certification of schools.—(1) The State Government may establish and maintain schools for the reception of children and youthful offenders.

(2) The State Government may, on the application of or with the consent of the governing body of any school not established under sub-section (1) certify that such school is fit for the reception of children or youthful offenders to be sent there in pursuance of this Act and may pay to the governing body of such school such contributions as they may think fit for the maintenance thereof.

49. Management of schools.—(1) For the control and management of every school established under sub-section (1) of Section 48, a superintendent and a committee shall be appointed by the State Government, and such superintendent and committee shall be deemed to be the manager of the school for the purposes of this Act.

(2) Every school certified under sub-section (2) of Section 48 shall be under the management of such persons as may be approved by the State Government and the persons so approved shall be deemed to be the manager of the school for the purposes of this Act.

50. Inspection of approved schools.—(1) The State Government may appoint a Chief Inspector of approved schools and such number of inspectors and assistant inspectors as it may consider necessary to assist the Chief Inspector ; and every person so appointed to assist the Chief Inspector shall have such of the powers and duties of the Chief Inspector as the State Government may direct but shall act under the direction of the Chief Inspector.

(2) Every approved school shall, at least once in six months, be inspected by the Chief Inspector of approved schools or by an inspector or assistant inspector provided that where any such school is for the reception of girls only and such inspection is not made by the Chief Inspector, the inspection shall where practicable be conducted by a woman.

Approved School.—has been defined by Section 2 (1) and means a school established or certified under this Act. Section 48 provides for the establishment and certification of schools. This section provides for the inspection of these schools, by the Chief Inspector of approved schools, or by the inspector or the assistant inspector.

51. Power of inspectors.—An approved school shall be liable to inspection at all times and in all its departments by the Chief Inspector and by the inspector and assistant inspector appointed for the purpose and by such persons as may be empowered by the State Government in that behalf.

52. Medical inspector.—Any registered medical practitioner empowered in this behalf by the State Government may visit any approved school at any time with or without notice to its manager in order to report to the Chief Inspector on the health of the inmates and the sanitary condition of the schools :

Provided that where any such school is for the reception exclusively of girls, a male registered medical practitioner shall not visit such school without giving previous notice to the manager thereof.

58. Power of State Government to withdraw certificate.—The State Government, if dissatisfied with the condition, rules, management or superintendence of an approved school may at any time by notice served on the manager of the school declare that the certificate of the school is withdrawn as from a date specified in the notice and from that date the withdrawal of the certificate shall take effect and the school shall cease to be an approved school :

Provided that the State Government may, if it thinks fit, instead of so withdrawing the certificate, by notice served on the manager of the school, prohibit the admission of children or youthful offenders to the school for such time as may be specified in the notice or until the notice is revoked :

Provided also that before the issue of notice under this section or under the first proviso thereto a reasonable opportunity shall be given to the manager of the school to show cause why the certificate shall not be withdrawn or admission to the school shall not be prohibited as the case may be

54. Resignation of certificate by manager.—The manager of an approved school may, on giving six months' notice in writing to the State Government through the Chief Inspector of their intention so to do, resign the certificates of the school and at the expiration of six months from the date of such notice, unless before that time the notice is withdrawn, the resignation of the certificate shall take effect and the school shall cease to be an approved school.

55. Effect of withdrawal or resignation of certificate.—A child or youthful offender shall not be received in an approved school in pursuance of this Act after the date of the receipt by the manager of the school of the notice of withdrawal of the certificate or after the date of a notice of resignation of the certificate ; but the obligation hereinafter mentioned of the manager to teach, train, lodge, cloth and feed any children or youthful offenders detained in the school at the respective dates aforesaid shall, except in so far as the State Government may otherwise direct, continue until the withdrawal or resignation of the certificate takes effect.

56. Disposal of inmates on withdrawal or resignation of certificates.—Where a school ceases to be an approved school, the children or youthful offenders detained therein shall be either discharged absolutely or on such conditions as the State Government may impose or transferred by order of the State Government to some other approved school in accordance with the provisions of the Act relating to discharge and transfer.

57. Auxiliary homes.—The State Government may establish auxiliary homes for the reception of any inmates or any classes of inmates of approved schools or may certify any other such home heretofore established or which hereafter may be established by any other agency, and the certificates may be withdrawn or resigned, in like manner as a certificate of a school and every such home shall for such purposes as may be specified by the State Government be treated as part of the approved school or schools to which it is attached.

58. Liabilities of manager.—The manager of an approved school not established by the State Government may decline to receive

any child or youthful offender proposed to be sent to them in pursuance of this Act, but when they have once accepted any such child or youthful offender they shall be deemed to have undertaken to teach, train, lodge, clothe and feed him during the whole period for which he is liable to be detained in the school, or until the withdrawal or resignation of the certificate of the school takes effect.

59. Inspection of institutions for the reception of poor children.—(1) The State Government may cause any institution for the reception of poor children supported wholly or partly by voluntary contributions, and not liable to be inspected by or under the authority of Government to be visited and inspected from time to time at all reasonable hours, by persons appointed by them for the purpose of securing the health and welfare of the children and the sanitation of the premises.

(2) Any person so appointed shall have power to enter the institution at all reasonable hours and to make a complete inspection thereof and of all registers and documents, relating thereto. Any person who obstructs him in the execution of his duties shall be liable on conviction to a fine not exceeding fifty rupees.

(3) Where any such institution is carried on in accordance with the principles of any particular religious denomination the State Government shall, if so desired by the manager of the institutions, appoint where practicable a person of that denomination to visit and inspect that institution.

(4) Where any such institution is for the reception of girls only, the inspection shall, ordinarily, be conducted by a woman.

CHAPTER VIII

POWERS AND FUNCTIONS OF COURTS HAVING JURISDICTION UNDER THE ACT

60. Juvenile Court.—(1) The State Government may establish a Juvenile Court for any local area in a district and appoint a Judge of such Court.

(2) For purposes of this Act, a Court means the Juvenile Court established by the State Government for any area and includes a Court of Sessions and a magistrate of the first class specially empowered to exercise the powers of a Court under this Act.

61. Powers of Juvenile Courts and other Courts. Save as otherwise provided in this Act—

(1) where a Juvenile Court has been established for any local area, such Court shall deal all cases in which a child is charged with the infringement of law and shall deal with and dispose of all other proceedings under this Act, but shall not have power to try any case in which an adult is charged with an offence under Chapter III; and

(2) where a Juvenile Court has not been established for any local area, no Court other than Courts empowered under Section 60 to exercise the powers of a Juvenile Court shall have powers to deal with any case in which a child is charged with the infringement of law or to deal with or dispose of any other proceedings under this Act.

Jurisdiction :—The ordinary criminal courts have no powers to try a child unless they have been specially empowered under the Act. Section 60 provides for the establishment of Juvenile Courts and if such Courts are established offences by a child shall be tried by these Courts. In case of a joint trial of a child and an adult, the child may be tried by the ordinary Courts in accordance with the provisions of the Code of Criminal Procedure.

62. Procedure when a Magistrate is not empowered to pass an order under this Act.—(1) When any Magistrate not empowered to exercise the powers of a Court under this Act is of the opinion that a child brought before him is a proper person to be sent to an approved school or to be dealt with in any other manner in which the case may be dealt with under this Act, he shall record such opinion and submit his proceedings and forward the child to the nearest Juvenile Court having jurisdiction in the case or to the nearest Magistrate empowered to exercise the powers of a Court under this Act.

(2) The Court or the Magistrate to whom the proceedings are so submitted may make such further inquiry, if any, as the Court or Magistrate may think fit and may pass such orders as the Court or Magistrate might have passed if the child had originally been brought before or tried by him.

63. Joint trial of the child and adult.—Where a child is charged with an offence together with any other person not being a child then notwithstanding anything contained in this Act the child may be tried together with the adult in accordance with the provisions of the Code of Criminal Procedure, 1898, and nothing in this Act shall require the child to be tried by a Juvenile Court but the sentence, if any awarded to the child shall be in accordance with the provisions of this Act.

64. Presence of persons in Juvenile Courts.—Save as provided in this Act, no person shall be present at any sitting of a Juvenile Court except—

- (a) the members and officers of the Court ;
- (b) the parties to the case before the court and other persons directly concerned in the case including the Police Officers; and
- (c) such other persons as the Court specially authorizes to be present.

65. Withdrawal of persons from Juvenile Courts.—If at any stage during the course of a trial of a case or proceedings, a Juvenile Court considers it expedient in the interests of the child to direct any person including the parent, guardian or the spouse of the child or the child himself to withdraw, the Court shall be entitled to give such direction and thereupon such person shall withdraw. If any person refuses to withdraw, the Court may take steps to remove him.

66. Dispensing with attendance of child.—If at any stage during the course of the trial of a case or proceedings, the Court is satisfied that the attendance of a child is not essential for the purposes of the hearing of the case or proceeding the Court may dispense with his attendance and proceed with the trial of the case in the absence of the child.

67. Withdrawal of persons from Court when a child is examined as witness.—If at any stage during the course of the trial of a case or proceeding in relation to an offence against, or any conduct,

contrary to decency or morality, a child is summoned as a witness, any Court trying the case or holding the proceedings may direct such persons as it thinks fit, not parties to the case or proceeding, their legal advisers and the officers concerned with the case of proceeding, to withdraw such persons shall then withdraw. If any person refuses to withdraw, the Court may take steps to remove him.

68. Factors to be taken into consideration in passing orders by Courts.—For the purposes of any order which a court has to pass under this Act, the Court shall have regard to the following factors :

- (a) the age of the child ;
- (b) the circumstances in which the child is living ;
- (c) the reports made by the Reformation Officer ; and
- (d) such other matters as may, in the opinion of the Court, require to be taken into consideration in the interest of the child :

Provided that where a juvenile delinquent is found to have infringed the law, the above factors shall be taken into consideration after the Court has recorded a finding against the juvenile delinquent that he has infringed the law.

CHAPTER IX

GENERAL AND MISCELLANEOUS

69. Minimum age for committal to approved schools.—A Court shall not order a child or young offender under the age of ten years to be sent to an approved school unless for any reason, including the want of a fit person of his own religious persuasion who is willing to undertake the care of him, it is satisfied that he cannot be dealt with otherwise.

70. Principles to be observed by Courts in dealing with children and young persons.—Every Court in dealing with a child who is brought before it, either as needing care or as an offender or otherwise shall have regard to the welfare of the child and shall in a proper case take steps for removing him from undesirable surroundings and for securing that proper provision is made for his education and training.

71. Prohibition against publication of certain matter in newspapers.—(1) No newspaper report of any proceedings under this Act shall reveal the name, address or school, or include any particulars calculated to lead to the identification, of any child concerned in the proceedings, either as being the person against or in respect of whom the proceedings are taken or as being a witness therein nor shall any picture be published in any newspaper as being or including a picture of any child so concerned in any such proceedings as aforesaid :

Provided that the State Government may, in any case, if satisfied that it is in the interests of justice so to do, by order dispense with the restriction laid down by this section to such an extent as may be specified in the order.

(2) Any person who publishes any matter in contravention of the provisions of this section shall be punishable with imprisonment of either description for a term which may extend to two months or with fine which may extend to two hundred rupees or with both.

72. Reports of Reformation Officers and other reports to be treated confidential.—The report of the Reformation Officer or any other report considered by the Court under Section 68 shall be treated as confidential.

73. Presumption and determination of age.—(1) Where a person, whether charged with an offence or not, is brought before any court otherwise than for the purpose of giving evidence and it appears to the court that he is a child, the court may make due inquiry as to the age of that person and for that purpose may take such evidence as may be forthcoming, and may record a finding thereon, stating his age as nearly as may be.

(2) A declaration by the court under the preceding sub-section as to the person brought before it being under the age of sixteen years shall, for the purposes of this Act be final and no court shall in appeal or revision interfere with any such declaration.

74. Religious persuasion of persons to whom child is committed.—(1) In determining the schools to which a child or youthful offender is to be sent under this Act, the court shall ascertain the religious denomination of the child or youthful offender and shall, if possible, select a school in which facilities are afforded for instruction in his religion.

(2) In determining the person to whose care a child shall be committed under this Act, the court shall ascertain the religious denomination of a person who gives such undertaking as seems to the court sufficient that the child will be brought up in accordance with the religion of the child and such religion shall be specified in the order.

(3) In any case where a child has been committed pursuant to any such order to the care of a person who is not of the religious denomination of the child or who has not given such undertaking as aforesaid, the court which made the order or any court of like jurisdiction shall, on the application of any person in that behalf and on its appearing that a fit person of the religious denomination of the child or who will give such undertaking as aforesaid is willing to undertake the care of the child, make an order committing him to the care of such fit person.

(4) When a child is committed to the care of an approved school in which facilities for instruction in his religion are not afforded or to a person who does not give an undertaking that the child entrusted to him will be brought up in his religion the court shall take an undertaking from such school or such person that the child shall not be brought up in any religion other than his own.

(5) Where a child is boarded out, or where a child or youthful offender is permitted by licence to live with any other person, the manager of the school shall select for this purpose a person of the same religion as the child or youthful offender, as the case may be if such person is available, and if no such person is available then a person who gives a satisfactory undertaking that the child or youthful offender shall be brought up in accordance with the religion of such child or youthful offender, and if no such person is available then another person within the provisions of Section 39 or 40 as the case may be.

(6) When a child has been committed to the care of a person who gives an undertaking as aforesaid but the undertaking is not observed the child shall be liable to be removed from the care of such person and dealt with according to the provisions of sub-section (3) of this section.

(7) Whenever any person interested in the religion of the child is informed of any attempt at conversion or tampering with his religion he may apply to the court for an enquiry and the court on being satisfied may issue an order removing the said child from the custody of such institution or person and hand over the custody to another fit person or institution.

75. Continuation of proceedings against child on his attaining specified age.—For the purposes of this Act, a person shall be deemed to be a child, if at the time of the initiation of any proceedings against him under this Act or at the time of his arrest in connexion with which any proceedings are initiated against him under this Act, such person has not attained the age specified in clause (4) of Section 2 :

Provided that if during the course of the proceedings under this Act such person attains the age specified in the said clause, the proceedings already commenced shall be continued and orders may be passed in respect of such person under this Act as if such person was a child notwithstanding anything to the contrary in this Act.

Appeal—Effect.—The provisions of Section 29 can be extended to appeals also.¹

76. Repeal.—(1) With effect from the date the Chapters I, III, IV, V, VI, VII and VIII of this Act are brought into force in any area the provisions of the Reformatory Schools Act, 1897, and Sections 29-B and 399 of the Code of Criminal Procedure, 1898 shall cease to apply to such area.

(2) Any youthful offender detained in any reformatory school in any area in pursuance of an order passed by a Court under the Reformatory Schools Act, 1897, before the date on which the said Act ceases to apply to the said area under sub-section (1) shall, from such date, be deemed to have been ordered to be detained as if such youthful offender was originally dealt with under this Act and the Reformatory School in which he was detained shall be deemed to be an approved school established under this Act. Any order of detention or placing out on licence of such youthful offender under the Reformatory Schools Act, 1897, shall from such date, be deemed to be an order passed under the corresponding provision of this Act and the provisions of this Act shall, so far as may be, apply to such youthful offender accordingly.

77. The Tehri-Garhwal Rajya Bal Dhumrapan Nisedh Act, 1949, be, and is hereby, repealed.

78. Bond taken under this Act.—The provisions of Chapter XLII of the Code of Criminal Procedure, 1898, shall, so far as may be, apply to bonds under this Act.

79. Appeal and revision.—(1) An appeal from an order made by a court under Section 3, 29, 30, 31, 38, 49 or 41 shall lie—

1. *Mushtaq v. State*, 1954 A 580=1954 A L J 258=1954 Cr L J 1288=1954 A W R 191 (H.)

- (a) to the Sessions Judge if passed by a juvenile court, or a Magistrate of the first class specially empowered in his behalf under Section 61; and
 - (b) to the High Court if passed by a Sessions Judge.
- (2) An order passed under the provisions of this Act and not subject to appeal under sub-section (1) may be revised by the High Court.

80. Period of limitation after filing appeals.—An appeal under sub-section (1) of Section 79 shall be preferred—

- (a) where it is an appeal under clause (a) of the said sub-section, within thirty days of the date of order passed by the Juvenile Court or the Magistrate;
- (b) where it is an appeal under clause (b) of the said sub-section, within 60 days of the date of Order passed by the Sessions Judge.

81. Saving of jurisdiction of Civil Courts.—Nothing in this Act shall be construed to affect, or in any way derogate from, the jurisdiction or authority of the Court as defined in sub-section (5) of Section 4 of the Guardians and Wards Act, 1890.

82. Power to amend orders.—Without prejudice to the powers of Courts of appeal and revision, any custody order or supervision order or probation order may be amended by the Court which made the order in respect of the person named as custodian, supervisor or Reformation Officer the period of such duration and such matters of detail as may be specified therein.

83. Removal of disqualification pertaining to convictions.—Where a child is found to have infringed the law, the fact that he has been so found shall not have any effect under Section 75 of the Indian Penal Code, 1860, or Section 565 of the Code of Criminal Procedure, 1898, or operate as a disqualification for office or any employment or election under any law.

84. Control over custodian of child—Any person in whose care a child is placed under the provisions of this Act, shall, while the order is in force, have the like control over the child as if he were his parent, and shall be responsible for his maintenance, and the child shall continue in his care for the period stated by the Court notwithstanding that he is claimed by his parent or any other person.

85. Reformation Officers and persons authorized to be deemed to be public servants.—The Reformation Officers and all other persons authorized or entitled to act under any of the provisions of this Act shall be deemed to be public servants within the meaning of Section 21 of the Indian Penal Code, 1860.

86. Protection of action taken under this Act.—No suit, prosecution or other legal proceeding shall be instituted against any person for anything which is in good faith done or intended to be done under this Act, save with the permission of the State Government.

87. Delegation of powers.—All or any of the powers conferred by this Act on the State Government may be exercised or performed by such other Officer and subject to such conditions as the State Government may by notification specify in that behalf.

- (a) to the Sessions Judge if passed by a juvenile court, or a Magistrate of the first class specially empowered in his behalf under Section 61; and
 - (b) to the High Court if passed by a Sessions Judge.
- (2) An order passed under the provisions of this Act and not subject to appeal under sub-section (1) may be revised by the High Court.

80. Period of limitation after filing appeals.—An appeal under sub-section (1) of Section 79 shall be preferred—

- (a) where it is an appeal under clause (a) of the said sub-section, within thirty days of the date of order passed by the Juvenile Court or the Magistrate;
- (b) where it is an appeal under clause (b) of the said sub-section, within 60 days of the date of Order passed by the Sessions Judge.

81. Saving of jurisdiction of Civil Courts.—Nothing in this Act shall be construed to affect, or in any way derogate from, the jurisdiction or authority of the Court as defined in sub-section (5) of Section 4 of the Guardians and Wards Act, 1890.

82. Power to amend orders.—Without prejudice to the powers of Courts of appeal and revision, any custody order or supervision order or probation order may be amended by the Court which made the order in respect of the person named as custodian, supervisor or Reformation Officer the period of such duration and such matters of detail as may be specified therein.

83. Removal of disqualification pertaining to convictions.—Where a child is found to have infringed the law, the fact that he has been so found shall not have any effect under Section 75 of the Indian Penal Code, 1860, or Section 565 of the Code of Criminal Procedure, 1898, or operate as a disqualification for office or any employment or election under any law.

84. Control over custodian of child—Any person in whose care a child is placed under the provisions of this Act, shall, while the order is in force, have the like control over the child as if he were his parent, and shall be responsible for his maintenance, and the child shall continue in his care for the period stated by the Court notwithstanding that he is claimed by his parent or any other person.

85. Reformation Officers and persons authorized to be deemed to be public servants.—The Reformation Officers and all other persons authorized or entitled to act under any of the provisions of this Act shall be deemed to be public servants within the meaning of Section 21 of the Indian Penal Code, 1860.

86. Protection of action taken under this Act.—No suit, prosecution or other legal proceeding shall be instituted against any person for anything which is in good faith done or intended to be done under this Act, save with the permission of the State Government.

87. Delegation of powers.—All or any of the powers conferred by this Act on the State Government may be exercised or performed by such other Officer and subject to such conditions as the State Government may by notification specify in that behalf.

88. Rules.—(1) The State Government may subject to the condition of previous publication make rules for the purpose of carrying into effect the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely :—

- (a) contents of order committing children or youthful offenders to approved schools or to the care of a fit person ;
- (b) matters incidental to the appointment, resignation and removal of Reformation Officers and the remuneration and expenses payable to them ;
- (c) the duties of Reformation Officers ;
- (d) the conditions on which societies and institutions may be recognized by the State Government for providing Reformation Officers ;
- (e) the manner in which youthful offenders may be released on probation ;
- (f) the conditions subject to which a youthful offender may be released on licence and the form and conditions of such licence ;
- (g) establishment and maintenance of approved schools and auxiliary homes and the certification of such schools as approved schools and of auxiliary homes ;
- (h) the management of approved schools and auxiliary homes ;
- (i) the appointment of visitors and their tenure of office ;
- (j) the inspection of approved schools ;
- (k) the maintenance, educational and industrial, religious or moral or other training of the inmates of approved schools ;
- (l) conveyance of youthful offenders and children to approved schools ;
- (m) the grant of permission to inmates of approved schools to absent themselves for short periods ;
- (n) visits to and communication with inmates of approved schools ;
- (o) the punishment for offences committed by inmates of approved schools ;
- (p) inspection of institutions referred to in Section 57 ;
- (q) the manner of detention of children under arrest or remanded or committed for trial ;
- (r) the procedure to be adopted in Juvenile Courts ;
- (s) the procedure to be adopted in any case or inquiry under this Act before any Court other than a juvenile court ;
- (t) the manner in which a child may be committed to the care of a relative or other fit person, and the duties of such persons and the supervision of such children ;
- (u) the contribution by parents and other persons liable to maintain children and youthful offenders ;

- (v) the boarding out of children and the licensing and supervision of children and youthful offenders, and the submission of reports regarding them.

THE CINEMATOGRAPH (UNITED PROVINCES AMENDMENT) ACT, 1942

(U. P. ACT NO. VII OF 1942)

CONTENTS

Sections

- | | |
|---------------------------------------|-------------------------|
| 1. Short title and respective effect. | of Act II of 1918. |
| 2. Amendment of Section 8(2)(a) | 3. Validation of rules. |

RE-ENACTED AND CONTINUED BY S. 2 AND SCH. OF U. P. XIII OF 1948

(Received the assent of the Governor on March 27, 1942 and was published in the United Provinces Government Gazette on April 4, 1942).

An Act further to amend the Cinematograph Act, 1918 in its application to the United Provinces.

Preamble.—Whereas it is expedient further to amend the Cinematograph Act, 1918, in its application to the United Provinces, for certain purpose.

And whereas by the Proclamation, dated the third day of November, 1931, promulgated under Section 93 of the Government of India Act, 1935, the Governor of the United Provinces has assumed to himself all power vested by or under the aforesaid Act in the Provincial Legislature.

And whereas the continuance in force of the said Proclamation has been approved by resolutions of both Houses of Parliament;

Now, therefore, the Governor in exercise of the powers aforesaid is pleased to make the following Act:

Prefatory Note :—This Act was made by the Governor in exercise of the powers assumed by him by the Proclamation, d. Nov. 8, 1939, issued under Section 93 of the G. of I. Act, 1935, and was published, with S. O. R., in *Gaz.*, 1942, Pt. VII-A p. 9. It was re-enacted and continued by S. 2 and Sch. of U. P. Act XIII of 1948.

This Act has been extended to and enforced in the merged states of Rampur, Banaras and Tehri Garhwal by the Merged States (Laws) Act, 1949, with effect from Jan. 1, 1950.

1. Short title and respective effect.—(a) This Act may be called the Cinematograph (United Provinces Amendment) Act, 1942.

(b) This Act shall be deemed to have had effect as from the third day of August, 1931.

2. Amendment of Section 8(2)(a) of Act II of 1918.—In clause (a) sub-section (2) of Section 48 of the Cinematograph Act, 1918 after the word "safety" the following words shall be added, namely—

"and the fees to be levied for licensing buildings for Cinematograph exhibitions and for inspection of electric installations in such buildings".

3. Validation of rules.—Any rule made before the commencement of this Act in purported exercise of any such power as is mentioned in Section 2 of this Act, and which would have been lawful if this Act had come into operation on the third day of August, 1931, shall be deemed to have been lawfully made.

THE UTTAR PRADESH CINEMATOGRAPH RULES, 1951

*Made by the Government of U. P. under Section 9 of the Cinematograph Act, 1918, as promulgated under G. A. D. notification No. 197/III—7 (5).
48, dated January 22, 1951, as amended, vide notification
No. 3283/III 7 (40)-45, dated June 26, 1951.*

CONTENTS

Sections

1. Title, commencement and extent.
- 2.
3. Application for constructing a building.
4. Application for a licence.
5. Inspection by Electrical Inspector
6. Inspection by Medical Officer of Health and Regional Fire Officer.
7. Conditions for granting and renewing a licence.
8. Requirements of permanent buildings.
9. Licence for permanent buildings.
- 10.
11. Electrical requirements.
12. Ventilation.
13. Sanitation.
14. Seating accommodation.
15. Exits.
16. Fire precautions.
- 17.
18. Prohibition of use of building for purposes other than that of a cinema.
19. Entry into projection room or winding room.
20. Prohibition on naked lights and smoking in projection and winding rooms.
21. Projection room.
22. Cinematograph machine
23. Winding room.
24. Film storage
25. Electrification.

Sections

26. Operations.
27. Period and extent of licences to travelling cinemas.
28. Grant of licence for travelling cinemas.
29. Enclosure for travelling cinemas or special cinematograph exhibitions.
30. Fire precautions for auditorium of travelling cinemas and special cinematograph exhibitions.
31. Inspection of travelling cinemas by Electric Inspector.
32. Refusal of licence to travelling cinema, if in dangerous proximity to other building.
33. Pandal used during special cinematograph exhibition or by travelling cinemas.
34. Fencing in vicinity of temporary building.
35. Notice for special cinematograph exhibition.
36. Exemption of special cinematograph exhibition from the provisions of the rules.
37. Inspection of Cinemas.
38. Fees for cinematograph licence.
39. Fees for cinematograph licence.
- 40.
41. Control of sound from cinemas.
42. Booking offices.
43. Revocation or suspension of licence.

APPENDIX

1. Title, commencement and extent—(i) These rules shall be called "The Uttar Pradesh Cinematograph Rules, 1951."

(ii) They shall come into force with effect from February 1, 1951.

(iii) They shall apply to all cinemas in Uttar Pradesh.

2. In these rules unless there is anything repugnant in the subject or context:

(i) "Act" means the Cinematograph Act, 1918, as amended from time to time.

- (ii) "Auditocium" means that portion of the licensed premises where accommodation is provided for the public to view the exhibition of films.
- (iii) "Cinema" means the entire place licensed for cinematograph exhibition and includes all appurtenances, plant and apparatus located therein.
- (iv) "Government" means the Government of Uttar Pradesh.
- (v) "Licence" means a written authorisation by the Licensing Authority to give cinematograph exhibitions and granted in the form set out in Appendix I to these rules and shall be subject to necessary modifications or amplifications in accordance with any terms or conditions imposed under sub-section (3) of section 5 of the Act.
- (vi) "Licensee" means a person who has been granted a licence and includes his agent appointed for the purpose under a power-of attorney and whose appointment has been intimated in writing to the Licensing Authority.
- (vii) "Licensing Authority" means an officer appointed as such by the Government by notification in the official *Gazette*, for a specified area.
- (viii) "Permanent building" means a building which is constructed for permanent use with stone, mud, brick, mortar, cement or other non-inflammable material.
- (ix) "Projection room" means that portion of the cinema in which the cinematograph machine is erected.
- (x) "Special cinematograph exhibition" means a cinematograph exhibition given on specified occasion or occasions at a place not ordinarily used for such purpose.
- (xi) "Temporary building" means a building which is not a "permanent building" and includes a booth, tent or similar structure.
- (xii) "Temporary enclosure" means that portion of a place licensed for special cinematograph exhibition or of a travelling cinema, where cinematograph apparatus is kept or erected or where films are stored and wound.
- (xiii) "Winding rooms" means that portion of the cinema in which cinematograph films are stored and wound.

3. Application for constructing a building.—(1) A person desirous of constructing a permanent building to be used for cinematograph exhibition shall submit an application specifying the site on which the proposed building is to be constructed together with a plan and specifications thereof to the officer authorised in this behalf by Government.

(2) The plan mentioned in the aforesaid sub-rule shall contain the elevations and sections of the buildings, the proposed electrical installations, arrangements for ventilation, sanitation and parking of vehicles and the position of the premises in relation to adjacent premises and public thoroughfares on which the building abuts, within a radius of one furlong.

(3) When Government approval is received by the Licensing Authority, it shall furnish to the applicant a certificate signifying such

approval. The certificate shall state the period within which construction shall be completed, and if construction is completed within that period a licence shall not ordinarily be withheld.

4. Application for a licence.—An application for the grant of a new licence for cinematograph exhibition shall be made to the Licensing Authority and shall contain full particulars of the ownership of the premises and the cinematograph machine and shall be accompanied with the following documents :

- (a) the order of approval of plan under rule 3 (1) ;
- (b) plan of the building and premises containing the specifications enumerated in sub-rule (2) of rule 3 ;
- (c) plan of seating arrangements for each class separately ;
- (d) certificate from the Electrical Inspector to Government that the electrical installations conform to the required standards and the existing rules ;
- (e) certificate from the Medical Officer of Health having jurisdiction that the arrangements for sanitation conform to the requirements of the existing rules ; and
- (f) certificate from the Regional Fire Officer having jurisdiction that the arrangements for fire-fighting appliances provided and the precautions taken against fire conform to the requirements of the existing rules.

5. Inspection by Electrical Inspector.—For the purposes of giving a certificate mentioned in clause (d) of the preceding rule, the Electrical Inspector shall inspect the building and the requirements of the said clause may be temporarily dispensed with by the Licensing Authority where the Electrical Inspector, on receipt of a written request from the applicant, has, for six weeks therefrom, been unable to carry out the inspection.

6. Inspection by Medical Officer of Health and Regional Fire Officer.—The Medical Officer of Health and the Regional Fire Officer shall likewise, before giving a certificate, make an inspection of the premises and the building and, where they are unable to make an inspection within six weeks after the receipt of a written request, the requirements as to the filing of their certificates may be temporarily dispensed with by the Licensing Authority.

7. Conditions for granting and renewing a licence.—(1) No licence shall be granted or renewed in favour of any person unless (i) he or his agent appointed for the purpose referred to in rule 2 (vi) is residing in the city, town or area within whose limits the cinematograph exhibition is intended to be given, and (ii) the Licensing Authority is satisfied that the requirements of these rules have been fully complied with.

(2) No building except that already licensed at the date this rule comes into force shall be licensed for cinematograph exhibition if it is situated.

- (a) within a radius of one furlong from—

- (i) any residential institution attached to a recognized educational institution such as a college, a high school or girls' school ; or

- (ii) a public hospital with a large indoor patient ward ; or
- (iii) an orphanage containing one hundred or more inmates ; or
- (b) in any thickly populated residential area which is either exclusively residential or reserved or used generally for residential as distinguished from business purposes.

For the purpose of this rule, the District Magistrate shall, subject to the general control of the Government determine what is a hospital, a recognized educational institution, a larger indoor patient ward or a thickly populated residential area, and his decision shall be final and conclusive:

Provided that the District Magistrate may for sufficient reason and with the prior approval of the Government, relax this rule or any part thereof in any case and specially in the case of cinema halls already completed or nearing completion with the approval of the local authorities prior to the enforcement of these rules :

Provided further that in relaxing this rule or any part thereof the Government shall take into consideration the nature of the proposed building and whether or not it is sound-proof or is within a radius of 50 feet from any petrol pump or any shop or store dealing in highly combustible material or is air-conditioned.

8. Requirements of permanent buildings.—A permanent building shall *inter alia* fulfil the following requirements :

- (i) it shall be provided with an efficient lightning conductor ;
- (ii) if entirely detached, the minimum distance between it and other buildings shall be not less than 20 feet with a free all-round space so as to enable the audience to disperse quickly in the event of a fire and to permit easy access to fire engines and fire-fighting appliances ;
- (iii) if not entirely detached, it shall abut on two or more different ways or open spaces providing at all times free means of exit. The different ways or open spaces shall have sufficient width to enable the audience to disperse quickly in the event of fire and to permit easy access to fire engines or other fire-fighting appliances :

Provided that one of the above means of exit shall have a clear width of 35 feet including the footpath and shall be a thoroughfare.

- (iv) the frontage shall be of adequate length and the building shall have verandahs on two sides ;
- (v) if accommodation is meant to be provided for more than 1,000 persons, its distance from other buildings shall be such as the Licensing Authority may by a special written order require ;
- (vi) it shall not be constructed under or on the top of any other building, without the special written sanction of the Licensing Authority ;
- (vii) where it is in close proximity of another building, it shall be separated therefrom by a wall or other structure of fire-resisting material in a manner approved by the Licensing Authority, whose decision as to whether any building is

in close proximity shall be final. No opening in the walls or in any part of the building as may be likely to communicate fire to a neighbouring building shall be made;

- (viii) the distance between the floor of the auditorium and the ceiling or any covering immediately above shall not be less than 12 feet;
- (ix) the landings, doors, staircases, lobbies and corridors shall be not less than 4 feet 6 inches in width if accommodation is meant for less than 400 persons and not less than 6 feet in width when accommodation is provided for more than 400 persons;
- (x) all staircases shall be constructed of non-inflammable material with steps not less than 10 inches wide and not more than 7 inches high. Each flight shall have not more than 15 and not less than 3 steps;
- (xi) the floors of all landings, staircases, passages and gangways shall be of sufficient strength to carry 120 lb. live load per square feet and shall be constructed of fire proof material;
- (xii) every staircase forming an exit from an upper storey to the ground floor shall have on both sides walls of brick or other fire-resisting material in the storeys through which it passes and no opening shall be made into the auditorium except when required for an exit from the upper storey which it serves. The staircase leading to the upper storey may, however, on one side, instead of a wall, be provided with extra stout handrails or balusters. Enclosed staircases except on platforms and landings with a length exceeding the width of the stairs shall have on both sides strong handrails firmly secured to the walls by strong metalled brackets sunk into the walls to a depth of three inches. For all upper storeys intended for use by the public there shall be provided at least two staircases;
- (xiii) stairs turning at angles shall have a proper landing at each turn and no winders shall be introduced; all landings shall be provided with emergency lights;
- (xiv) where possible gradients or inclined floors shall be used instead of steps, but no gradient or inclined floor shall be steeper than 1 in 10;
- (xv) all exit doors for the use of the public in cinemas already in existence shall be not less than 7 feet in height and 4 feet 6 inches in width, and not less than 7 feet 6 inches in height and 5 feet in width in cinemas licensed after the coming into force of these rules, the width being measured between leaves of the doors in open position. The doors shall open outwards and when open shall not obstruct any gangway, passage, staircase, landing or lobby, but rest flush against the walls;
- (xvi) cloak rooms where provided shall be so situated that their use causes no obstruction to the free use of any existing corridor or other passage for exit of the audience.

9. Licence for permanent buildings.—A licence for cinematograph exhibition may be granted by the Licensing Authority in respect of permanent buildings for a period not exceeding one year renewable on expiry for a similar period of not more than one year at a time.

10. Every licence granted prior to the publication of these rules in the official *Gazette* shall be deemed to terminate within three months after the date of such publication unless the period of the licence expires before that date

Provided that the proportionate amount of the licence fee shall, if the period exceeds one month, be refunded to the nearest anna. The application for refund in such cases should be submitted to the Licensing Authority within a period of three months from the date of the termination of the licence.

11. Electrical requirements.—In addition to the electrical requirements specified in rule 8, the licensee shall comply with the provisions of the Indian Electricity Act, 1910, and the rules framed thereunder so far as the same are applicable to the cinema.

12. Ventilation.—(1) All parts of a permanent building shall be properly and sufficiently ventilated.

(2) Unless the auditorium of a permanent building is air-conditioned, it shall in addition to natural ventilation be provided with sufficient number of power-driven exhaust fans suitably located and of adequate size, at least one large size exhaust fan being provided for every 150 persons.

The number and size of such fans shall be approved by the Licensing Authority and shall be entered in the licence. All exhaust fans shall be kept working during performances except when the air-conditioning plant, if any, is working.

(3) When windows or skylights which provide internal ventilation have to be darkened or obscured, free permanent ventilation shall also be provided through ridge or ceiling ventilators. The clear opening of such ventilation shall be not less than one square foot for every ten persons accommodated :

Provided that the Licensing Authority may relax the condition in the case of buildings already constructed and having sufficient ventilation otherwise, if the extra ventilation is likely to prove very expensive.

(4) Except in the case of air-conditioned buildings, ceiling and bracket fans, in such numbers and of such size as may be approved by the Licensing Authority, shall be provided in addition to exhaust fans.

(5) If more than one exhibition is given on any day, the entire auditorium shall be flushed with air for at least fifteen minutes before each exhibition and shall be aired thoroughly. No spectator shall be permitted to be present in the auditorium during this period.

13. Sanitation.—(i) The premises shall be kept clean and the auditorium shall be swept and cleaned before each exhibition.

(ii) Latrines and urinals separately for men and women, at different places, and of a suitable type and design shall be provided.

(iii) There shall be not less than one latrine seat for every 100 persons or less and not less than one place for urinating for every 50 persons or less of the total seating accommodation :

Provided that at least one latrine seat and two places for urinating shall be provided for women.

(iv) The latrine shall be cleaned and flushed immediately before and after each exhibition and shall be properly washed with a disinfectant at least twice a day.

(v) In the case of a water-flushed latrine or urinal a separate water reservoir of adequate capacity shall be provided for flushing.

(vi) The management may, subject to the directions issued in this behalf by the District Magistrate, refuse admission to or eject persons known to be suffering from a contagious, loathsome or infectious disease.

(vii) The rooms, passages and staircases of all permanent buildings shall be lime washed and all iron and woodwork of such a building shall be cleaned or varnished at least once every year and shall at all times be kept clean and free from dirt.

(viii) The doors and windows of the halls of the building shall be left open for at least three hours every morning, and for half an hour between shows. During the half-hour intervals between the two shows the auditorium shall be disinfected with an aerosol approved by the Medical Officer of Health. The auditorium shall be swept, cleaned and disinfected every morning.

(ix) The Medical Officer of Health shall be responsible for periodical inspections of all cinemas licensed under the Cinematograph Act, 1918 (II of 1918), situated within the municipal limits to see that sanitary conveniences and arrangements for making the premises clean as provided under the rules are being complied with and any instructions given in this regard as laid down in the rules shall be complied with by the management within the time specified.

14. Seating accommodation. (i) The Licensing Authority shall determine the maximum number of seats for each class separately and the same shall be specified in the licence and prominently displayed near the entrance door to every class in the cinema.

(ii) Except ground floor and first floor no other floor for seating shall be permitted in permanent cinema buildings.

(iii) The seating shall be so arranged as to leave free access to the exits.

(iv) The seating space assigned to each person shall be not less than by 18" by 18". Seats shall have back supports and armrests for each person.

(v) The rows of seats shall be so arranged as to leave a clear space of not less than 15 inches between the back of one seat and the foremost portion of the seat in the row behind measured between perpendiculars.

(vi) All seats except in the boxes, shall be securely fixed to the floor or shall be firmly secured together in complete lengths ; the complete line shall be firmly attached to the floor. Seating on the floor will not be allowed in permanent buildings.

(vii) The distance between the front row of the seats and the screen shall be not less than 18 feet.

15. Exits.—(i) A clear gangway not less than three feet wide shall be kept all round and not less than four feet wide in the centre; and shall be so arranged that no seat shall be more than 10 seats from gangway :

Provided that in an auditorium of less than 30 feet in width the centre gangway may be omitted. Temporary seats must on no account be placed in the gangways.

(ii) The Licensing Authority may, having regard to the large number of seats in an auditorium, require that a gangway or gangways, of a specific width, shall be provided parallel to the rows of seats to secure direct access to exits.

(iii) An adequate number of clearly indicated exit doors, as may be determined by the Licensing Authority, shall be provided to afford safe and speedy egress for the audience.

(iv) All doors through which the public must pass in using any stairway, corridor or other passage for exit shall remain unbolted during the entire period of the exhibition.

(v) Passages, gangways, corridors, landings and lobbies shall be kept free from all obstruction at all times to enable quick egress.

(vi) Walls of passages, gangways or corridors shall not have any recess nor shall there be any projection therefrom within 6 feet of the ground. Lights shall not be hung to a height less than 7 feet above floor level. Fire appliances are not included within the purview of this sub-rule.

(vii) Two separate exits not leading into the same thoroughfare shall be provided to every floor or gallery and no stairway shall discharge into a passage or corridor against or across the direction of the exit ; provided that the Licensing Authority may accept any other arrangements which are likely to ensure adequate safety.

16. Fire precautions.—All such premises shall be in communication with the nearest fire brigade station, if there is any, in that town by telephone which shall be fitted in such place and manner as the Licensing Authority may direct. The installation and maintenance of the complete telephone connection shall be carried out at the cost of the licensee.

17.—(1) The following fire-extinguishing appliances shall be provided :

In the enclosure—A blanket, a bucket of dry sand, a C. T. S. extinguisher of a pattern approved by the Licensing Authority.

In the auditorium—Four portable fire-extinguishers of a pattern approved by the Licensing Authority and a supply of not less than five gallons of water per 100 square feet of floor area stored as follows :

Thirty-three per cent of the supply or 60 gallons whichever is greater, stored in buckets of two or three gallons capacity each inside the auditorium ; and the balance stored in tanks or cisterns or buckets of any capacity so arranged as to be easily accessible, the arrangements in this regard having been approved by the Licensing Authority.

(2) These appliances shall be so disposed as to be readily available

for use. The buckets shall have round bottoms and handles. They shall be painted red with the word "Fire" painted on them in large block letters in English and the local vernacular.

(3) The portable fire-extinguishers shall be of the two-gallon size; they shall be installed at an adequate height from the ground. A record regarding the maintenance of portable extinguishers shall be kept. Tetrachloride extinguishers shall not be permitted in the enclosure.

(4) Where a portable fire-extinguisher of the chemical combination pressure type is older than three years or has not been tested previously, it shall be tested by hydraulic pressure by the Fire Officer, to show that it can withstand for one minute a pressure of 350 lbs. per square inch and a certificate of such test shall be submitted to the Licensing Authority. Similar tests shall be repeated annually.

(4-A) An addition to the fire-fighting equipment specified in sub-rule (1), the following equipment shall be provided and maintained:

At least 4 stirrup pumps and 8 buckets filled with water if there is no gallery or first floor in the premises; and at least 6 stirrup pumps and 12 buckets filled with water if there is a gallery or first floor in the premises in which case, at least 2 stirrup pumps and 4 buckets filled with water shall be kept in the gallery or first floor.

Attendants and staff shall be trained in the use of all fire-fighting equipment maintained in the premises.

(5) The licensee shall—

- (i) once in every three months empty the container of each portable fire-extinguisher provided in the licensed premises, clean its nozzles and working parts, stir the liquids in it and top it up, immediately record the date of having done so on a slip of paper and paste the same on the outside of such container; and
- (ii) once in every year discharge each portable fire-extinguisher provided in the licensed premises and recharge it and immediately record the date of such recharge in durable paint on the external surface of the container of the portable fire-extinguisher.

(6) In addition to the requirements of sub-rule (1) and sub-rule (4-A), there shall be provided such other facilities for fighting fire as may be required by the Authority.

18. Prohibition of use of building for purposes other than that of a cinema.—No portion of a cinema shall be used as a restaurant, boarding house, shop, factory, workshop or manufactory, or for the purposes of storage or of the preparation or sale of food, drink, except with the sanction of the Licensing Authority and subject to such conditions and restrictions as may be imposed and specified by him in this behalf nor shall any portion of the cinema be used for residential purposes by day or night.

19. Entry into projection room or winding room.—No person other than the licensed operator, the engineer-in-charge of the installation or the licensee shall be permitted to enter the projection room or the winding room during a performance.

20. Prohibition on naked lights and smoking in projection and winding rooms.—No matches and candles or any other naked light shall be used nor shall smoking be permitted within the projection room or winding room. A notice bearing in red letters the words ‘smoking strictly prohibited’ shall be prominently displayed in each of those rooms.

21. Projection room.—(i) No inflammable article shall unnecessarily be taken into or be allowed to remain in the projection room.

(ii) **Combustible material**—No combustible material shall be allowed within the enclosure, and all necessary combustible materials when not in use shall be kept in fireproof receptacles suitable for the purpose, and of a type approved by the Regional Fire Officer. The box shall be kept closed at all times except when it is necessary to obtain or replace a film.

(iii) Only films which are being used during the exhibition shall be kept in the projection room.

(iv) The projection room shall be substantially constructed of fire-resisting material and shall be so placed as to be outside the main building forming the auditorium. Provided that in case of cinemas existing at the time of commencement of these rules, this requirement may be expressly waived by the Licensing Authority. Before waiving the above requirement the Licensing Authority shall personally satisfy itself that the alternative arrangement proposed is such as will provide sufficient precaution against the extension of fire from the projection room to the auditorium.

(v) The openings in front of the projection room for each projection machine shall not be more than three in number of which the middle one shall not exceed 8 inches square and the others shall not be more than 5 inches square. Each such aperture shall be provided with a fire-proof plate glass screen not less than 5/16 inches thick fixed in position with some tight joints.

(vi) The entrance to the projection room shall be through a closely fitting self-closing door of fire-resisting material suitably placed and opening outwards and all openings, bushes and joints shall be so constructed and maintained as to prevent, as far as possible, the escape of any smoke into the auditorium. This door shall be kept closed at all times when not used for ingress or egress. Channels of ventilation shall not be allowed to communicate direct with the auditorium. The projection room shall be provided with an opening or vent flue in its roof or upper part of its side wall leading to the outside air. The vent flue shall have minimum sectional area of 50 square inches and shall be fireproof :

Provided that when the projection room is so constructed that it can open directly on the outside of the building through a window, such window shall be permitted for the comfort of the operators but such projection room shall not be exempted from the requirements of the installation of a vent flue as prescribed above. For the convenience of the operators one or more electric fans of suitable dimensions shall be provided by the licensee.

(vii) The projection room shall be at least eight feet in height if one machine is to be operated the space shall not be less than 48 square feet and an additional 24 square feet shall be provided for each

additional machine to be operated. The width of the room shall be such as to provide sufficient space and easy passage for operators when passing behind the machine.

(viii) The staircase for the projection room shall be altogether separate from one meant for the use of cinema-goers.

22. Cinematograph machine.—(i) The cinematograph machine shall be placed on firm supports of fire-resisting material fixed to the floor of the projection room. Only standard and fireproof machines shall be used and the following sub-clauses may serve as a guide, where necessary :

(ii) The body of the cinematograph machine shall be constructed of metal or lined with metal and asbestos ; in the later case there shall be an air space between the metal and asbestos lining. The bottom of the cinematograph machine must form a metal tray which shall be surrounded by a vertical edge at least one foot in depth.

(iii) The cinematograph machine shall be provided with a metal shutter which can be readily inserted between the source of light and the film gate.

(iv) The shutter shall be immediately dropped in the event of any accident to the cinematograph machine or stoppage of the film and shall only be raised when the film is in motion for the purpose of projection.

(v) The film gate shall be of massive construction and provided with ample heat radiating surface and the passage for the film shall be sufficiently narrow to prevent film travelling upwards or downwards from the light opening.

(vi) All cinematograph projectors shall be fitted with two metal film boxes of substantial construction, not more than 18 inches in diameter inside measurement, to and from which the films shall travel :

Provided that where only one film is used for the purpose of exhibition, the film box may not be more than 20 inches in diameter.

23. Winding room.—(i) The winding room shall be constructed entirely of fire-resisting material and shall be large enough to allow the winder to operate freely. It shall be situated apart from the projection room and auditorium but in the case of cinemas already licensed or the construction of which has started before these rules came into force, the Licensing Authority may, for reasons to be recorded, permit the winding room to adjoin the projection room. The winding room shall have no openings in the wall so as to permit communication with the auditorium or public passage ways.

(ii) The winding room shall be closed by a closely fitting self-closing door of fire-resisting material which shall only be opened for ingress and egress and shall remain closed during the entire period that the entertainment is in progress. Suitable arrangements shall be made for ventilation in the winding room and one or more electric fans of suitable dimensions shall be provided by the licensee.

(iii) Only electric lights shall be used in the winding room and any lamps in proximity to the film shall be closed in a stout fitting designed to prevent breakage of the bulb.

(iv) Spools shall be chain or gear driven and films shall be so

wound upon spools that the wound film shall not at any time reach or project beyond the edges of the flanges of the spool.

(v) The winding of films shall not be carried out in the projection room while an exhibition is in progress.

(vi) All films which are not in use shall be kept in prescribed containers specified in the Cinematograph Film Rules, 1948.

(vii) Excepting a film which is being wound or stored, no inflammable article shall unnecessarily be taken into or be allowed to remain in the winding room.

(viii) All cinemas in permanent buildings shall, without exception, be required to provide and use a winding room in accordance with the above requirements.

24. Film storage—For the storage and transport of cinematograph films having a nitro-cellulose base, the Cinematograph Film Rules, 1948, made by the Central Government under the Petroleum Act, 1934 (XXX of 1934), shall apply.

25. Electrification—(1) *General*.—(i) No illuminant other than electric light shall be used in a cinematograph projector.

(ii) The electric installation in general shall conform to the "Regulations for Electrical Equipment of Buildings" issued by the Institute of Electrical Engineers, England, and the Indian Electricity Rules, 1937, in so far as they are applicable.

(iii) Where cleat wiring or leading in wires of feeding fans or pendant lights run on wooden beams, or other inflammable material, they shall run in conduit so as to resist fire in the event of a short circuit.

(2) Wiring shall be done in the manner specified hereunder :

Projection Room—

(i) Cables for projectors shall be taken as separate circuits from the supply side of the main fuse in general lighting circuit;

(ii) An efficient double pole iron clad switch shall be fitted within the projection room in the projectors' circuit;

(iii) Within the projection room the insulating material of all electric cables including the leads of the pendant lights and fans shall be covered with fire-resisting material;

(iv) The wiring in the projection room shall be in seamless screw-ed conduit with efficient bushes. Lead covered cables shall not be used unless enclosed in such conduits;

(v) All switchgears, fuses, etc. shall be iron clad;

(vi) The body of the projectors, switchgears, conduit, etc. shall be connected to the earth by means of not less than no. 8 Standard wire gauge copper wire;

(vii) All resistances, with the exception of resistance for regulating purposes, shall be placed outside the projection room and winding room and if reasonably practicable also outside the auditorium. If placed inside the projection room or auditorium, such resistance shall be protected by a gauge wire guard or other efficient means of preventing accidental contact with films;

- (viii) Where switchboards are installed in the projection room, the space between any switchboard and the wall shall be enclosed with fireproof material in such a manner that the fire cannot spread to the wiring at the back of the switchboard;
- (ix) No electric current, except with the written sanction of the Electric Inspector, shall be at a pressure higher than 250 volts within the projection room at any time;
- (x) Not more than one-third of the general lighting shall be controlled from the projection room.

(3) Winding Room—

The above requirements for the wiring in the projection room shall apply to wiring provided in the winding room.

(4) Emergency Lights—

- (i) No illuminant other than electricity shall be used for emergency lights which shall have—

- (a) an independent source of supply such as batteries, or
- (b) separate main fuses where supply is generated in the premises and a separate line with a separate pole fuse where the installation is fed by the town supply and metered separately.

(ii) Emergency lights shall consist of—

- (a) not less than two lights of 200 watts each in the auditorium,
- (b) exit lights,
- (c) lights in the doorways, foyer, lobbies, verandahs, staircases, corridors and passages for all portions of the premises to which the public has access either generally or in emergency and on the extension of the building facing thoroughfares.

Note:—(a), (b) and (c) may each be controlled by independent switches or (ii) (a) may have an independent switch while (ii) (b) may be controlled by the second switch. All or both switches shall be fixed side by side.

(iii) All emergency lights shall be controlled from a switchboard installed in a convenient and easily accessible place in front of the building. None of the circuits of the emergency lights shall on any account enter or be carried through the projection room or winding room.

(iv) Boxes bearing the word 'EXIT' painted (red) in three-inch letters on translucent glass with dark black background shall be either mounted over each emergency exit door and shall be either connected with the emergency light circuit or fed independently by means of a battery or lighted either with at least two oil lamps, or with at least one gas burner. Such exit-signs shall be kept continuously alight during entire period of a performance.

There shall be "NO EXIT" signs of the same dimensions as the "exit" signs on closed doors into dark background and in white letters.

(v) An efficient portable electric battery or torch with a fully protected bulb shall be kept available in one particular space and in the enclosure and also in the place used for winding film throughout the performance and during all winding or re-winding operations.

Besides the normal lighting system installed in the premises, such other lights as may be required by the Electric Inspector shall be provided for safe exit of the audience in emergency. Each member of the staff controlling admission to the auditorium and each operator shall be provided with an electric torch in working condition.

(5) *Motor Room* —

- (i) The wiring shall comply with the requirements of the Indian Electricity Rules, 1937, as amended from time to time.
- (ii) A shock restoration chart which may be obtained on payment from the Superintendent Printing and Stationery, Uttar Pradesh, Allahabad, shall be provided and hung in a conspicuous place.

26. Operations.—(i) At least two operators and one additional operator for every additional machine holding valid permits shall be engaged in manipulating each projector and no other person shall be allowed within ten feet of the machine during the exhibition except the licensee himself or any technician authorised in writing by the licensee. It shall be the sole duty of one of the operators to take charge of the films after they have passed through the machine. The other operator shall be in charge of the machine and the projection room or operating box.

(ii) An operator's permit shall be granted by the Licensing Authority in the form set out in Appendix II, and a fee of Rs. 10 shall be chargeable for each permit. No fee, shall, however, be charged in respect of permits issued to operators in Government employ.

(iii) A permit shall not be granted to operator unless he—

- (a) possesses a working knowledge of cinematograph machine and in particular a working knowledge of the type of machine which he is to operate;
- (b) is thoroughly conversant with the rules and conditions imposed regarding precautions against fire;
- (c) is conversant with the speedy and effective method of dealing with an outbreak of fire;
- (d) is proficient in the handling, winding, repairing and cleaning of films.

27. Period and extent of licences to travelling cinemas.—The Licensing Authority may grant a licence for a period not exceeding six months to a travelling cinema for cinematograph exhibition. Such licence shall be valid within the territorial jurisdiction of the Licensing Authority. No travelling cinema shall exhibit films in any local area for a period exceeding six months at a stretch.

28. Grant of licence for travelling cinemas.—(1) A person desirous of obtaining a licence for a travelling cinema shall apply to the District Magistrate within whose jurisdiction the exhibition is proposed to be given and shall attach to his application a plan and description of the building. The plan shall show the seating arrangement in the auditorium with exits, gangways, passages and structures (if any).

(2) If a licence is granted the plan and description aforesaid duly corrected or amplified where necessary and certified by the Licensing

Authority shall be attached to the licence. The terms and conditions of the licence shall be liable to modifications by the Licensing authority at any time and this fact shall be stated in the licence, which along with the plan and description shall be produced on demand by any person authorised to inspect the cinema.

29. Enclosure for travelling cinemas or special cinematograph exhibitions.—A “temporary enclosure” shall fulfil the following requirements :

- (i) *Construction*.—It shall consist of a smokeproof box constructed of sheet iron or steel on a substantial frame-work and securely fastened together. The internal height from the floor to roof shall be at least ten feet. The floor shall be 48 square feet if one machine is operated and 24 square feet for every additional machine shall be necessary. The room shall be of such width as may allow sufficient space behind the machine for the operators to pass easily. The building shall in every other respect conform to the requirements of a projection room in a permanent building : Provided that, if the temporary enclosure is kept *in situ* or stored on the premises and does not travel with a portable apparatus thereby avoiding risk of breakage, such enclosure may be of asbestos sheeting or other type of fire-resisting material on a substantial fire-resisting framework. The type of fire-resisting material used shall be approved by the Regional Fire Officer.
- (ii) *Electrical and other necessary apparatus.*.—All apparatus within a temporary enclosure shall likewise satisfy the requirements prescribed for similar apparatus in a permanent building except that such apparatus may be of a portable type.
- (iii) *General working.*.—The rules regarding fire-fighting appliances, prohibition of inflammable materials, smoking, lights, matches, film re-winding and non-admittance of persons other than operators, the licensee or technician, prescribed for projection rooms in permanent building shall apply to a temporary enclosure.

30. Fire precautions for auditorium of travelling cinemas and special cinematograph exhibitions.—Rules 16 and 17 will apply *mutatis mutandis* in the case of travelling cinemas also.

31. Inspection of travelling cinemas by Electric Inspector.—(i) No licence shall be granted to a travelling cinema till the Electric Inspector to Government has, after inspection, certified that the equipment is mechanically safe and is provided with adequate safety apparatus :

Provided that if the Electric Inspector is unable so to certify before the date on which it is proposed to exhibit the films, the Licensing Authority may, after satisfying himself that the inspection fee has been deposited, that the licensee has furnished a copy of his tour programme and that the provisions of rules 31 and 32 have been complied with, grant a provisional licence. The tour programme shall forthwith be sent by the applicant to the Electric Inspector to Government and he shall arrange to carry out his inspection as soon as possible thereafter.

(ii) All travelling cinemas whose stay in the district is likely to extend beyond one month, shall have their installations inspected by the Electric Inspector to Government.

(iii) A fee of Rs 50 shall be levied and credited to Government for every initial inspection by the Electric Inspector to Government and a further fee of Rs. 25 for every subsequent inspection rendered necessary by the detection of defects at a previous inspection which in the opinion of the Electric Inspector make the installation unsafe.

32. Refusal of licence to travelling cinema, if in dangerous proximity to other building.—The Licensing Authority may refuse a licence to a travelling cinema if in his opinion any portion of the building or structure is in dangerous proximity to any other building.

33. Pandal used during special cinematograph exhibition or by travelling cinemas.—(i) In every pandal constructed of inflammable material there shall be kept on each side an opening at least seven feet high and eighteen feet wide. The opening may be closed by lattis fixed on split bamboo frame, fastened by twine on the inside but so as to be easily removable.

(ii) Doors and openings not ordinarily in use may be covered or closed by mats, screen or similar material so as to prevent removal by light pressure from inside the building or structure.

34. Fencing in vicinity of temporary building.—No external fencing shall be allowed within ten feet of a temporary building.

35. Notice for special cinematograph exhibition.—No cinematograph exhibition shall be given in any premises where such exhibition is not a regular feature, unless notice has been given at least ten clear days before exhibition is due, to the Licensing Authority by the licensee of such premises.

36. Exemption of special cinematograph exhibition from the provisions of the rules.—Where a special cinematograph exhibition is to be given in an institution, club or other place and it is not practicable to provide therefor a fireproof enclosure, the Licensing Authority may, for reasons to be recorded, dispense with the requirements of any of the foregoing rules by specification in the licence. A space of six feet shall, however, be railed off round the cinematograph apparatus if the provisions applicable to temporary enclosure are for any reasons relaxed. No drapery and no unprotected combustible material other than film or that composed by the floor, shall be within six feet of the cinematograph apparatus. Before granting any such licence the Licensing Authority shall ensure that adequate precautions are taken against a probable outbreak of fire and for the safety of the film.

37. Inspection of Cinemas.—(1) In addition to the initial inspection for getting a certificate referred to in rule 5, every permanent building with electrical installation shall be inspected by the Electric Inspector or his representative once every year ; if at any such inspection any defects in the installation are noticed he may make further inspections at any time of the year to satisfy himself that the management has removed defects satisfactorily.

(2) The following fees for inspections by the Electric Inspector or

his representative shall be payable by the management and shall be credited to the revenues of the State :

	Rs.
(a) for the initial inspection ..	75
(b) for the annual inspection ..	50
(c) for any subsequent inspection rendered necessary by the existence of defects at the initial or annual inspection ..	25

(3) Besides the inspection made before the grant of a licence, the Licensing Authority shall inspect or cause to be inspected any cinema within his jurisdiction at such intervals as it may deem necessary.

(4) An inspection book shall be maintained by the licensee in which all such inspection notes shall be recorded.

38. Removal of defects.—The Licensing Authority shall cause notice to be given to the licensee requiring him to remove the defects ascertained within a period which shall be prescribed in the notice.

39. Fees for cinematograph licence.—The fee payable by the licensee for the grant or renewal of a permanent or temporary licence under the Act shall be credited to the revenues of the State and shall be levied at the following scale, viz :

(1) For the grant or renewal of a permanent licence for permanent cinemas—

For a period—

	Rs.
(a) not exceeding one month ..	20
(b) between one and six months ..	120
(c) six months to one year ..	240

(II) For the grant or renewal of a temporary licence for travelling cinemas—

For a period—

	Rs.
(a) not exceeding one month ..	15
(b) exceeding one month but not exceeding three months ..	45
(c) exceeding three months but not exceeding six months ..	90

40. An application for renewal of licence shall be made one month before the date of expiry of the licence, failing which a penalty of Rs. 5 shall be leviable in addition to the renewal fee. The period of validity of permanent licences which is for a year as provided in rule 9 shall expire on March 31 each year.

41. Control of sound from cinemas.—When granting or renewing any licence the Licensing Authority may prescribe the distance beyond which sound shall not travel from the cinema. Licensees shall not cause noise outside cinemas by the use of loudspeakers, gramophones, trumpets or drums, etc.

42. Booking offices.—Booking offices may be so situated as not to cause any overcrowding in the side verandahs and main entrance. If necessary, a separate window with sufficient standing space protected by rail for the use of ladies only may be provided if so required by the Licensing Authority.

43. Revocation or suspension of licence.—(i) The Licensing Authority may at its discretion revoke or suspend the licence granted to any cinema within its jurisdiction if it is satisfied—

- (a) that the licensee is responsible for a breach of one or more provisions of the Act, or these rules, or any condition of the licence,
 - (b) that any unauthorised alteration is made in the building or the seating arrangement or enclosure, or
 - (c) that the building and installations are not maintained in proper order, or
 - (d) that the licensee has failed without sufficient cause to comply with any direction given under the Act, or under these rules by an authority competent to issue such direction, or
 - (e) that the cinema is used or conducted in a manner prejudicial to the public interest.
- (ii) A licensee aggrieved by an order passed under the preceding clause may appeal to the State Government within a period of thirty days from the date of service of such order.
- (iii) The order shall be deemed to be duly served if it is tendered to the licensee, or, where in the opinion of the Licensing Authority personal service cannot be effected, if a copy of the order is affixed at a prominent place on the premises owned or controlled by the licensee.

APPENDIX I

[See rules 2 (v) and 7]

Form of Licence under the Cinematograph Act, 1918

Government (Seal) of India

No.

(a)-
situated at (b) _____ within the
District of _____ is licensed under
Section 3 of the Cinematograph Act, 1918 (Act II of 1918), as a place
where exhibitions by means of a cinematograph may be given from
_____, 19, , to _____
_____, 19, , both days inclusive.

This licence has been granted to (c) _____ and shall be terminated forthwith
if the said (c) _____ ceases to
own, to hold on lease or to manage the said (a) _____ .

This licence is granted subject to the conditions set forth in rules
issued by the State Government and to the further conditions—

(1) that the said (c) _____ shall not exhibit, or permit to be
exhibited, in the said (a) _____ any film other than a film which has been certified
as suitable for public exhibition by an authority constituted under

Section 6 of the Cinematograph Act, and which, when exhibited, displays the prescribed mark of that authority, and has not been altered or tampered with in any ways since such mark was affixed thereto,

(2) that the said (c) _____ shall cause to be exhibited at each performance given after the 30th September, 1946, in the (a) _____ one or more 'approved' films the total length of which is not less than one thousand feet or an 'approved' film exceeding 750 feet in length in case of cinemas exhibiting 35 M. M. films and 400 feet in case of cinemas exhibiting 16 M. M. films and shall comply with any direction which the Uttar Pradesh Government may by general or special order give as to the manner in which 'approved' films shall be exhibited in the course of any performance.

Note :—An 'approved film' means a cinematograph film approved by the Central Government or by the Government of Uttar Pradesh for the purpose of exhibition in compliance with condition (2) of the licence.

(3) that the said (c) _____ shall not exhibit or permit to be exhibited in the said (a) _____ to any person who is not an adult any film which has been certified by an authority constituted under Section 6 as suitable for public exhibition restricted to adults,

Note :—This condition shall not be construed as prohibiting the exhibition of a film in respect of which an 'A' certificate has been granted to children in arms below the age of three.

(4) that the said (c) _____ shall not exhibit or cause to be exhibited at any performance in the said (a) _____ (1) any advertisements regarding sexual diseases and medicines to correct sexual disorders or purporting to assist the childless in begetting children, etc. and (2) any indecent, obscene, immoral or suggestive advertisements, pictures or posters on the premises of the said (a) _____

(5) that the said _____ shall allow an officer deputed by the District Magistrate or Superintendent of Police to inspect at any time the films proposed for exhibition,

(6) that the said (c) _____ shall send previous information of every film proposed for exhibition to the District Magistrate together with the synopsis at least one week or, for good and sufficient reasons accepted by the District Magistrate upon application by the licensee, three days before exhibition is proposed,

(7) that the said (c) _____ shall allow the Entertainment and Betting Tax Commissioner and Assistant Commissioner, any Magistrate, Inspector of Entertainment Tax or Regional Fire Officer or Medical Officer of Health or any police officer not below the rank of Sub-Inspector deputed by the District Magistrate or the Superintendent of Police to inspect (a) _____ situated at (b) _____ in order to see that the rules issued by the State Government are being observed, and

(8) that the total number of seats in the auditorium and the seats for each class shall not exceed the number specified in the Schedule thereto appended nor shall the number and description of fire

appliances, exhaust fans, electric fans or sanitary requirements be less than those therein specified,

(9) that it shall be open to the Licensing Authority to amend or revoke the licence;

(10, that the said (c) _____ for the storage of cinematograph films under Rule 24 of the Uttar Pradesh Cinematograph Rules, 1951, shall comply with conditions 1 to 16, specified in licence form "C" as prescribed under Article 1 of Schedule III of the Cinematograph Film Rules, 1948, as amended from time to time.

District Magistrate—

The— — — — — 195 .

SCHEDULE

Class	Total number of seats	Description	Number	Location	Description and size	Number	Description and size	Number	Description and size

Remarks—

Sanitary requirements including number of latrine seats and places for urinating

District Magistrate—

APPENDIX II

[Under rule 26 (ii)]

Form of Permit for Cinematograph Operator

Permit No. —————

Whereas Sri _____ (Particulars) _____

and (Address _____) has been examined and is found qualified to perform the duties of an operator he is hereby permitted under rule 26 of the Uttar Pradesh Cinematograph Rules, 1951, to operate a cinematograph machine within Uttar Pradesh, for a period of three years ending _____ 195 . The licence fee of Rs. 10 (ten) payable for this permit has been realised and credited to the State revenues.

Licensing Authority.

Place—

Dated _____

THE CIVIL COURTS AMINS ACT, 1856¹

(ACT NO. XII OF 1856)

CONTENTS

Sections

	PREAMBLE		<i>Sections</i>
1.	[Repealed]	6-7. [Repealed]	Expense of Amins how charged.
2.	Appointment of Amins.	8.	When employed to sell property, deduction from proceeds.
3.	Amins by whom appointed and to what Courts attached.	9.	Power of Civil Courts, North-Western Provinces to employ Revenue Officers.
4.	[Repealed]	10.	
5.	Duties of Amins.		

[RECEIVED THE ASSNT OF THE GOVERNOR-GENERAL ON THE
9TH MAY, 1856.]

An Act to amend the Law respecting the employment of Amins by the Civil Courts in the Presidency of Fort William

Preamble.—Whereas the law by which the Civil Courts are authorised to employ Amins upon local investigations is defective, and requires amendment; * * *²; It is enacted as follows:

Prefatory Note:—This Act was declared by the Laws Local Extent Act, 1874 (Act XV of 1874), S. 7 and Sch. V, U.C. A., Vol. II, p. 250, to be in force in the whole of the Province of Agra (then the North-Western Provinces) except as regards the Scheduled Districts. It has been declared, by not. under the Scheduled Districts Act, 1874 (Act XIV of 1874) to be in force in the scheduled portion of the Mirzapur District and in Jaunsar-Bawar—See no's. nos. 634 and 638, d May 30, 1879, in Gaz., 1879, pp. 774 and 775, respectively.

Note:—This Act has been extended to the areas mentioned in column 1 of this table under the Act or Order mentioned in column 2 and enforced in such areas under notification, if any, mentioned in column 3 with effect from the date mentioned in column 4 against each such area.

Areas	Act or Order under which extended	Notification, if any, under which enforced	Date from which enforced
1	2	3	4
1. Rampur district	Rampur (Application of Laws) Act, 1950.	...	Dec. 30, 1949.
2. Banaras district	Banaras (Application of Laws) Order, 1949.	No. 3262(1)/ XVII-Mergo, d. Nov. 30, 1949.	Nov. 30, 1949.
3. Tehri-Garhwal district.	Tehri-Garhwal (Application of Laws) Order, 1943.	No. 3262 (2)/ XVII-Mergo, d. Nov. 30, 1949.	Ditto.

1. [Repeal of Regulations.] Rep. by Act XIV of 1870.

1. Short title given by S. 4 and Sch. III of Act V of 1897.
2. The words [and wherea], in consequence of the extended Jurisdiction which has been given to Moonsiffs and the change which has been made in the constitution of the office, it is no longer ex-

pedient that Moonsiffs should be employed in the attachment and sale of personal property, nor, except on rare and special occasions, in any of the duties enumerated in Ss. L, LI, and LIII, Reg. XXIII, 1814, and] rep. by Act XII of 1891.

2. Appointment of Amins.—In each district, officers to be designated Civil Court Amins shall be appointed for the purposes of this Act, and shall be remunerated by fixed monthly salaries.

[The number of Amins to be employed in each district shall be determined by the (State Government).⁴]

3. Amins by whom appointed and to what Courts attached.—The [District Judge shall, from time to time, attach the Civil Court Amins]⁵ to the several Courts of the district according as the state of business may require :

Provided that an Amin attached to any particular Court may, with the sanction of the Judge, be employed occasionally by any other Court.

4. [Declaration to be made by Civil Court Amins.] Rep. by Act X of 1873.

5. Duties of Amins.—***⁶ The Civil Court Amins may be employed in any of the following duties—

- (i) in investigating or adjusting accounts in any suit or other judicial proceeding ;
- (ii) in making local investigations when the Court may deem investigation on the spot to be requisite and proper for the purpose of elucidating the matters in dispute, or of ascertaining the amount of mesne profits or damages, in any suit or other judicial proceeding ;
- (iii) in delivering over possession of lands, houses and other immovable property, in execution of decrees or orders of Court ;
- (iv) in the sale of movable property, and of houses, gardens and other immovable property of the kind described⁷ in Section 3, Regulation VII, 1825 ;
- (v) in ascertaining the sufficiency of sureties and the means of persons suing *in forma pauperis*.

6—7. [Procedure in referring accounts to Civil Court Amins, procedure in cases of local enquiry.] Rep. by Act X of 1861.

8. Expense of Amins how charged.—Whenever a Civil Court Amin may be employed on any duty connected with a pending suit,

3. *Subs.* by the A. O. 1937 for [The number of amins to be employed in each district, and the salaries to be allowed to them, shall be determined by the L.G., with the sanction of the G.-G.-in-C.] Amins being servants of the Crown their salaries are now determined by rules made under S. 211 (2) (b) of the G. of I. Act, 1935.

4. *Subs.* by the A.O. 1950 for [Prov. Govt.]

5. *Subs.* by the A. O. 1937 for [Civil Court Amins shall be appointed by the Judge of the District * * * and the Judge shall from time to time attach them]. The words "with the sanction of the Court

of the Suddar Dowany Adaalat" which originally occurred after the word 'district' had been rep. by Act XII of 1873. The appointment of the Amins is now made by such person as the Governor may direct under S. 241. (1) (b) of the G. of I. Act, 1935. The words [subject to such general directions and restrictions as may from time to time be prescribed by the Sadar Court], rep. by Act XII of 1873.

That is [orchards, or small portions of lakhiraj land]. Ben. Reg. VII of 1825 was rep. by Act XVI of 1874, but not so as to affect the provisions referred to here, see S. 1, para. 2 of that Act.

or the execution of a decree, except the sale of property, the Court shall estimate the time which the duty may be expected to occupy, and shall charge for the expense of the Amin such fixed rate *per diem* as may be determined by the Sadar Court.

The amount shall be paid into Court by the party at whose instance or for whose benefit the Amin is deputed, and shall be added to the costs of suit.

9. When employed to sell property, deduction from proceeds.—When a Civil Court Amin shall be employed to sell property, a deduction at the rate of one anna in the rupee shall be made from the proceeds of the sale.

Expenses, if no sale takes place.—If no sale takes place by reason of the claim being satisfied, or for any other cause, a charge shall be made for the expenses of the Amin according to the time he may be employed.

A deposit to meet this charge, calculated in the manner prescribed in the preceding section, shall be made before the Amin is deputed, and shall be returned to the depositor if the sale takes place.

All sums paid for the employment of Amins, and all sums deducted from the proceeds of sales, shall be credited to ⁸[the revenues of the (States)⁹].

10. Power of Civil Courts, North-Western Provinces to employ Revenue Officers.—Nothing contained in this Act shall be held to prohibit the Civil Courts in the North-Western Provinces¹⁰ of the Presidency of Fort William from making use of the agency of the Revenue Officer in investigations and adjustments of accounts connected with land paying revenue to Government***¹¹.

THE [UTTAR PRADESH] CIVIL JUDGES (DESIGNATION) ACT IV OF 1936

([UTTAR PRADESH] ACT No. IV OF 1936)

CONTENTS

PREAMBLE

Sections

1. Short title, extent and commencement.
2. Amendment of Act XII of 1873.

Sections

3. Amendment of U. P. Act IV of 1925.
4. Amendment of other Acts.
5. Saving.

THE SCHEDULE

(PASSED BY THE LOCAL LEGISLATURE OF THE [UTTAR PRADESH])

Received the assent of the Governor of the [Uttar Pradesh] on the 11th July, 1936, and of the Governor-General on the 7th August, 1936, and was published under Section 81 of the Government of India Act on the 15th August, 1936.

8. Subs. by the A. O. 1937 for [Govt.]
9. Subs. by the A. O. 1950 for [Provinces].
10. Now [Agra].
11. The words [under such general directions as may from time to time be prescribed by the Sadar Court] rep. by Act XII of 1873, and the words [Wherever a Tuhseeldar, a Naib-Tuhseeldar or a

Peshkar shall be employed in any such investigation or adjustment under the orders of a Civil Court he shall possess all the powers vested in Civil Court Amins by s. VII of this Act; and the provisions of the said section shall be applicable to the proceedings held by such officer] with which the section concluded, rep. by Act XII of 1891.

An Act to effect a change in the designation of the office hitherto known as that of Subordinate Judge.

Freamble.—Whereas it has been resolved that the office hitherto known as that of “Subordinate Judge” shall in future be known as that of “Civil Judge”;

And whereas it is expedient to recognise and give effect to the change so made in the designation of the said office;

It is hereby enacted as follows :

1. Short title, extent and commencement.—(1) This Act may be called the [Uttar Pradesh] Civil Judges (Designation) Act, 1936.

(2) It extends to the [Uttar Pradesh].

(3) It shall come into force on such date as the [State] Government may by notification in the *Gazette* appoint in this behalf.

Legislative changes:—The words [Uttar Pradesh] and [State] were substituted for the words [United Provinces] and [Provincial] by A. O. 1950 throughout the Act.

2. Amendment of Act XII of 1887.—In Sections 3, 4, 6, 10, 11, 13, 18, 21, 22, 23, 24, 25, 26, 27, 31 and 36 of the Bengal, Agra and Assam Courts Act, 1887, in its application to the [Uttar Pradesh], for the word “subordinate” the word “civil” shall be substituted.

3. Amendment of U. P. Act IV of 1925.—In Sections 21, 22, 25, 26, 29, 30, 31, 32, 35, 39, 40 and 44 of the Oudh Courts Act, 1925, for the word “subordinate” the word “civil” shall be substituted.

4. Amendment of other Acts.—The Acts specified in the schedule are hereby amended to the extent and in the manner mentioned in the second column thereof.

5. Saving.—The office of a Civil Judge shall for all purposes be deemed to be not inferior to that of a Subordinate Judge.

THE SCHEDULE

Amendments

(See SECTION 4)

1	2
Short title	Amendments
Legal Practitioners Act, 1879. [Uttar Pradesh] Town Improvement Act, 1919.	In clauses (d) and (e) of the Second Schedule for the word “subordinate” the word “civil” shall be substituted. In clause (a) of sub-section (2) of Section 59 for the words “Subordinate Judge of the first grade” the words “Civil Judge” shall be substituted.

**THE U. P. CIVIL LAWS (REFORMS AND AMENDMENT)
ACT, 1954**

(U. P. Act No. XXIV OF 1954)

CONTENTS

Sections

- | | |
|---|-------------|
| 1. Short title and commencement. | 3. Savings. |
| 2. Amendment of enactments specified in the schedule. | SCHEDULE |

English translation of the Uttar Pradesh Civil Laws (Sudhar tatha Sanshodhan) Adhiniyam, 1954, as passed by the Uttar Pradesh Legislative, and assented to by the President on November 22, 1954, and published in the U. P. Gazette, Extraordinary, dated November 30, 1954.

An Act to provide for reforming the Civil Laws.

Whereas it is expedient to reform the Civil Laws and to that end in view to amend certain Acts in their application to Uttar Pradesh.

It is hereby enacted as follows :

Prefatory Note:—The Statement of Objects and Reasons of the Act are as below :—

“1. In 1950 the State Government appointed a committee under Chairmanship of Mr. Justice K. N. Wanchoo of the Allahabad High Court to enquire into the system of administration of justice in this state with particular reference to the causes accounting for delay in the disposal of cases, multiplicity of proceedings, and heavy expenses, and to suggest measures to curtail unnecessary litigation and to secure speedy justice at less expense. The report of the committee has since been published and considered by the Government. With a view to give effect to the recommendations of the Committee regarding amendment of civil laws, as accepted by the Government, it is proposed to amend, broadly in the manner indicated below, the Indian Evidence Act, 1872, the Transfer of Property Act, 1882, Provincial Small Cause Courts Act, 1887, Bengal, Agra and Assam Civil Courts Act, 1887, the Code of Civil Procedure 1908, and certain other Acts referred to in the schedule.

2. The execution of documents which are more than thirty years old is not required to be proved under Section 90 of the Indian Evidence Act, 1872, as it is difficult to secure proper evidence to prove them. It is felt that the period of 30 years prescribed in this section is too long which is proposed to be reduced to twenty years. It is further proposed that the presumption under Section 90 should be available even if a certified copy of the documents is produced. Considerable time of the Courts is wasted in recording evidence called to prove formally the authenticity of these documents which will be saved by this amendment.

Amendment in Section 106 of the Transfer of Property Act is aimed at increasing the period of notice in the case of month to month tenancies from 15 days to 30 days and at the same time doing away with the technicality of a notice expiring with the last day of the period of tenancy.

Schedule II of the Provincial Small Cause Courts Act, is being amended as it is felt that certain class of cases which otherwise are excluded from cognisance by Courts of Small Causes will be so triable by them. These suits do not in general differ from other cases triable by such Courts. It is expected that speedy justice will result thereby.

In order to reduce the volume of work in the High Court and to ensure quicker disposal of appeals, the Bengal, Agra and Assam Civil Courts Act, 1887 is proposed to be amended so that appeals in cases from Rs. 5,000 to Rs. 10,000 in valuation may be heard by District Judges.

In order to check frivolous litigation and multiplicity of proceedings, several amendments are proposed in the Code of Civil Procedure. The existing section 35-A of the Code of Civil Procedure empowers the Court to award special costs only if the party raises a plea at the earliest opportunity that the claim or defence is false and vexations to the knowledge of the opposite party. The Court cannot award special costs even though it should find the claim or defence to be false if such a plea has not been taken. In order to curb unnecessary litigation it is proposed to amend Section 35-A for giving wider powers to the Court to award special costs on its own motion if it is convinced that the claim or defence was vexations. When a decree passed by one Court is transferred to another Court, the Court to which the decree has been transferred does not possess powers to decide certain classes of objection relating to execution, discharge or satisfaction of the decree. It is proposed to give such powers to those courts also and thus do away with the necessity of referring the parties to the Court which passed the decree. Several other amendments are also proposed in the C. P. C.

A fair percentage of infructuous execution applications are made merely for the purpose of keeping the decree alive. This is neither in the interest of the decree-holders nor of the judgment-debtors who are unnecessarily saddled with expenses. The time of the Courts is also wasted in disposing of such applications. It is, therefore, proposed to enlarge the period from 3 years to six years provided in Article 182 of the Limitation Act, 1908.

To reduce the volume of work of District Judges, it is proposed that Indian Lunacy Act be amended so that the cases under the said Act may be heard by Civil Judges also.

It has been found that sometimes property which vests in the Receiver does not come into his possession and continues to be in the possession of the insolvent. It is desirable that in cases where the application is made by the debtor himself to be adjudged insolvent the Court should in all cases direct the Receiver to take immediate possession of the property of the applicant. Section 20 of the Provincial Insolvency Act is proposed to be amended accordingly. This Act is also proposed to be amended so as to raise the limit for summary administration from Rs. 500 to Rs. 1,000.

The Uttar Pradesh Civil Laws (Reforms and Amendment) Bill, 1953 is introduced accordingly for the consideration of the House." *Vide U. P. Gaz. Extra.* dated December 12, 1953.

1. Short title and commencement.—(1) This Act may be called the Uttar Pradesh Civil Laws (Reforms and Amendment) Act, 1954.

(2) It shall come into force at once.

Scope:—This Act has made far-reaching amendments in the Central Acts as applicable to the State of Uttar Pradesh. The Acts amended are: Indian Evidence Act, Transfer of Property Act, The Provincial Small Cause Courts Act, The Bengal, Agra and Assam Civil Courts Act, The Code of Civil Procedure, The Indian Limitation Act, The Indian Lunacy Act, The Oudh Laws Act, and The Provincial Insolvency Act. The effect of these amendments would be seen in the notes on the different enactments as amended by the Schedule.

2. Amendment of enactments specified in the Schedule.—The enactments specified in column 2 of the Schedule shall, in their application to Uttar Pradesh, be and they hereby are amended to the extent mentioned in columns 3 and 4 thereof.

3. Savings.—(1) Any amendment made by this Act shall not affect the validity, invalidity, effect or consequence of anything already done or suffered, or any right, title, obligation or liability already

acquired, accrued or incurred or any release or discharge of or from any debt, decree, liability, or any jurisdiction already exercised, and any proceeding instituted or commenced in any Court prior to the commencement of this Act shall, notwithstanding any amendment herein made continue to be heard and decided by such Court.

(2) Where by reason of any amendment herein made in the Indian Limitation Act, 1908, or any other enactment mentioned in column 2 of the Schedule, the period of limitation prescribed for any suit or appeal has been modified, or a different period of limitation will hereafter govern any such suit or appeal, then, notwithstanding any amendment so made or the fact that the suit or appeal would now lie in a different Court, the period of limitation applicable to a suit or appeal, as aforesaid, in which time has begun to run before the commencement of this Act, shall continue to be the period which but for the amendment so made would have been available.

Analogous Law:—See Section 6 of the U. P. General Clauses Act I of 1904 and notes thereunder.

Scope:—The effect of the saving section may be summarised as under:—

1) The amendments would not affect—

- (a) The validity, invalidity, effect or consequence of anything already done or suffered,
- (b) any right, title, objection or liability already acquired, accrued or incurred, or any release, or discharge of or from any debt, decree or liability,
- (c) any jurisdiction already exercised, and
- (d) any proceeding instituted or commenced in any Court prior to the commencement of this Act, which shall continue to be heard and decided by such Court.

(2) The period of limitation applicable to a suit or appeal in which time has begun to run before the commencement of this Act, shall continue to be the period which but for the amendment so made would have been available.

SCHEDULE

Serial number	Short title of the Act	Section or Schedule of the Act	Amendment	
			1	2
1	The Indian Evidence Act, 1872 (Act No. 1 of 1872.)	90		
				The existing section shall be re-numbered as Section 90 (1), and
				(a) For the words "thirty years" the words "twenty years" shall be substituted, and
				(b) The following shall be inserted thereafter as a new sub-section (2):
				"(2) Where any such document as is referred to in sub-section (1) was registered in accordance with the law relating to registration of documents and

Serial num- ber	Short title of the Act	Section or Schedule of the et	Amendment
1	2	3	4
	The Indian Evidence Act, 1872 (Act No. I of 1872.)		<p>a duly certified copy thereof is produced, the Court may presume that the signature and every other part of such document which purports to be in the handwriting of any particular person, is in that person's handwriting, and in the case of a document executed or attested, that it was duly executed and attested by the person by whom it purports to have been executed or attested."</p> <p>2. After Section 90, add the following as a new Section 90-A:</p> <p>(1) Where any registered document or a duly certified copy thereof or any certified copy of a document which is part of the record of a court of justice, is produced from any custody which the court in the particular case considers proper, the court may presume that the original was executed by the person by whom it purports to have been executed.</p> <p>(2) This presumption shall not be made in respect of any document which is the basis of a suit or of a defence or is relied upon in the plaint or written statement. The explanation to sub-section (1) of Section 90 will also apply to this section."</p>
2.	The Transfer of Property Act, 1882, (Act No. IV of 1882.)	106	<p>1. The words "expiring with the end of a year of the tenancy" and "expiring with the end of a month of the tenancy," shall be omitted.</p> <p>2. For the words "fifteen days' notice" the words "thirty days' notice" shall be substituted.</p>
3.	The Provincial Small Cause Court Act, 1887 (Act No. IX of 1887.)	The second Schedule.	<p>1. The articles (8), (26), (34), sub-clause (ii) of article (35) and article (43-A) shall be omitted.</p> <p>2. For the existing article (38), the following shall be substituted : "(38) a suit relating to maintenance but not being a suit for recovery of arrears of maintenance based upon a decree or a written agreement."</p>

Serial number	Short title of the Act	Section or Schedule of the Act	Amendment
1	2	3	4
4.	The Bengal, Agra and Assam Civil Courts Act, 1887 (Act No. XII of 1887.)	21	In clause (a) of sub-section (1) for the words "five thousand rupees" the words "ten thousand rupees" shall be substituted.
5.	The Code of Civil Procedure, 1908 (Act No. V of 1908.)	35-A	<p>1. For the existing sub-section (1), the following shall be substituted:</p> <p>"(i) If in any suit or other proceeding, (including proceedings in execution) but not being an appeal (or revision) the court finds that the claim or defence or any part thereof is false or vexatious to the knowledge of the party by whom it has been put forward and if such claim or defence or such part is disallowed, abandoned or withdrawn in whole or in part, the court may, after recording its reasons for holding such claim or defence to be false or vexatious, make an order for the payment to the successful party of costs by way of compensation irrespective of the decision on other issues in the case."</p>
		42	<p>2. For the existing section the following shall be substituted:</p> <p>"42. The Court executing a decree sent to it shall have the same power in executing such decree as the court which passed it. All persons disobeying or obstructing the execution of decree shall be punishable by such court in the same manner as if it had passed the decree, and its order in executing such decree shall be subject to the same rules in respect of appeal as if the decree had been passed by itself."</p>
		47	<p>3. The existing explanation of Section 47 shall be re-numbered as "Explanation—I" and a second explanation as follows shall be added thereafter:</p> <p>"Explanation—II. For the purposes of this section a purchaser at an auction sale in execution of the decree shall be deemed to be a party to the suit in respect of the property purchased by him."</p>

Serial num- ber	Short title of the Act	Section or Schedule of the Act	Amendment		
		1	2	3	4
	The Code of Civil Procedure, 1908 (Act No. V of 1908).	51	4.	After clause (b), the following shall be added as a new clause (bb): “(bb) by transfer other than sale, by attachment or without attachment of any property.”	
		92	5.	In sub-section (1) after clause (b) the following shall be added as a new clause (bb): “(bb) for delivery of possession of any trust property against a person who has coased to be trustee or has been removed.”	
		102	6.	For the words “five hundred rupees” occurring at the end of the section, the words “two thousand rupees” shall be substituted.	
		144	7.	For sub-section (1) the following shall be substituted: “(1) Where and in so far as a decree or an order is varied or reversed in appeal, revision or otherwise, the court of first instance shall, on the application of any party entitled to any benefit by way of restitution or otherwise, cause such restitution to be made, as will, so far as may be, place the parties in the position which they would have occupied but for such decree or order or such part thereof as has been varied or reversed; and, for this purpose the Court may make any orders, including order for the refund of costs and for the payment of interest, damages, compensation and mesne profits, which are properly consequential on such variation or reversal.”	
		145	8.	For the existing Section 145, the following shall be substituted— “145. Where any person has become liable as surety or given any property as security— (a) for the performance of any decree or any part thereof, or (b) for the restitution of any property taken in execution of a decree, or	

Serial number	Short title of the Act	Section or Schedule of the Act	Amendment
1		3	4
			<p>(c) for the payment of any money, or for the fulfilment of any condition imposed on any person, under an order of the Court in any suit or in any proceeding consequent thereon,</p> <p>the decree or order may be executed in the manner herein provided for the execution of decrees,</p> <ul style="list-style-type: none"> (i) if he has rendered himself personally liable, against him to that extent, and (ii) if he has given any property as security, by sale of such property to the extent of the security; <p>and such person shall, for the purposes of appeal, be deemed to be a party within the meaning of Section 47:</p> <p>Provided that such notice as the Court in each case thinks sufficient has been given to the surety.</p>
			<p><i>Explanation</i>—For the purposes of this section a person entrusted by a Court with custody of any property attached in execution of any decree or order shall be deemed to have become liable as surety for the restitution of such property within the meaning of clause (b)."</p>
6	The Indian Limitation Act, 1908 (Act no. IX of 1908).	The first Schedule.	<p>1. In Article 11 for the entry "one year" under the heading "Period of Limitation" the words "six months" shall be substituted.</p>
7	The Indian Lunacy Act, 1912 (Act no. IV of 1912)		<p>2. In Article 182 for the words "three years" in the entry under the heading "Period of Limitation" the words "six years" shall be substituted.</p>
			<p>3. In sub-section (3) of this section for the colon occurring at the end shall be substituted a comma and thereafter the following shall be added— "and includes any other Civil Court not being the court of a Munsif declared in that behalf and for such areas as may be specified by the State Government by notification in the <i>Gazette</i>, or"</p>

Serial number	Short title of the Act	Section or Schedule of the Act	Amendment
			4
1	2	3	
8	The Oudh Laws Act, 1876 (XVIII of 1876.)	19	For the last paragraph of this section the following shall be substituted : “The note as above required may be written and signed by the Judge with his own hand or typed to his dictation in open court and signed by him with his own hand, and such note shall form part of the record.”
9	The Provincial Insol- vency Act, 1920 (Act No. V of 1920.)	20	1. For the existing section, the following shall be substituted : “20. The Court when making an order admitting the petition may, and where the debtor is a petitioner, shall, appoint an interim receiver of the property of the debtor and may direct such receiver to take immediate possession thereof, and the interim receiver shall thereupon have such of the powers con-ferable on a receiver appointed under the Code of Civil Procedure, 1908, as the court may direct. Where in any case an interim receiver is not appointed at the time of admitting the petition, the court may make such appointment at any subsequent time before adjudication and the provisions of this section shall apply accordingly. <i>Explanation</i> —The order appointing an interim receiver may in cases where the debtor is not the petitioner be in respect of either the whole or a part only of the debtor's property.”
		59-A	2. After sub-section (3), the following shall be added as new sub-sections (4) to (7)— “(4) If on his examination any such person admits that he is indebted to the insolvent, the Court or such officer may, on the application of the receiver, order him to pay to the receiver at such time and in such manner as to the court or to such officer seems expedient, the amount in which he is indebted, or any part thereof, either in full discharge of the whole amount or

Serial num- ber	Short title of the Act	Section or Schedule of the Act	Amendment
1	2	3	4
			not, as the court or the officer, as the case may be, thinks fit with or without costs of the examination.
			(5) If on his examination any such person admits that he has in his possession any property belonging to the insolvent, the court or such officer may, on the application of the receiver, order him to deliver to the receiver that property or any part thereof, at such time, in such manner and on such terms as to the court or, to the officer, as the case may be, may seem just.
			(6) Orders made under sub-sections (4) and (5) shall be executed in the same manner as decrees for the payment of money, or for the delivery of property, under the Code of Civil Procedure, 1908, respectively.
			(7) Any person making any payment or delivery in pursuance of an order made under sub-section (4) or sub-section (5) shall by such payment or delivery be discharged from all liability whatsoever in respect of such debt or property."
74	3. For the words "five hundred rupees" the words "one thousand rupees" shall be substituted.		

COMMENTS

Evidence Act :—Section 90 of this Act has been amended in two respects: (1) The words "thirty years" have been substituted by "twenty years", (2) If a certified copy of a registered document referred to in sub-section (1) is produced, the Court may presume not only its genuineness but also its due execution and attestation. A further Section 90-A has also been added, under which a registered document, a certified copy thereof, a certified copy of a document which is part of the record of a Court of Justice can be presumed genuine. This presumption shall not be made in respect of a document which is the basis of the suit or of defence or is relied upon in the plaint or written statement.

Transfer of Property Act :—Section 106 of the Transfer of Property Act has been amended. This section required that in order to terminate a tenancy, a notice of six months in the case of yearly tenancy and a notice of fifteen days in the case of monthly tenancy, expiring with the end of the year or the month of the tenancy was necessary. If the notice did not comply with these requirements, it was invalid. After the amendment a notice of six months in case of yearly tenancy and of thirty days in case of monthly tenancy would be necessary but it need not expire with the end of the year or the month of the tenancy. It

is, however, necessary that the notice must be of thirty clear days or six clear months¹.

Provincial Small Cause Courts Act.—The Second Schedule to Act, which gives a list of suits excepted from the cognizance of a Court of Small Causes, has been amended by deleting Articles 8, 26, 34, 35 (ii) and 43-A. Now a suit falling under those articles would be maintainable in the Small Causes Court. Article 38 has been substituted by a new article. Previously under the old article a suit for maintenance was excepted from the cognizance of the Small Causes Court altogether, but under the new article a suit for arrears of maintenance based upon a decree or a written agreement would be maintainable in the Court of Small Causes only. The result of these amendments is that following suits would also lie in the Small Causes Court :

- (1) A suit for recovery of rent.
- (2) A suit to compel a refund of assets improperly distributed under Section 295 (now Section 73) Code of Civil Procedure. Section 73 (2) permits a suit for refund of assets wrongly distributed and such a suit would now be maintainable in Small Causes Court.
- (3) A suit on a policy of insurance or for the recovery of any premium paid under any policy.
- (4) A suit for compensation for an act which is, or save for the provisions of Chapter IV of the Indian Penal Code, will be an offence punishable under Chapter XVII of the said Code.
- (5) A suit to recover property obtained by an act which is or save for the provisions of Chapter IV of the Indian Penal Code, would be, an offence punishable under Chapter XVII of the said Code.
- (6) A suit for recovery of arrears of maintenance based upon a decree or a written agreement.

Bengal, Agra and Assam Civil Courts Act.—Section 21 (1) (a) has been amended so as to substitute "ten thousand rupees" for "five thousand rupees". This means that now an appeal from the decree or order of a Civil Judge where the value of the original suit in which, or in any proceeding arising out of which the decree or order was made did not exceed ten thousand rupees would lie to the District Judge.

Code of Civil Procedure —Sections 35-A, 42, 47, 51, 2, 102, 144 and 145 of this Act have been considerably amended with the following effect :—

(1) **Section 35-A.**—Sub-section (1) has been substituted by a new sub-section (1). Under the original section no costs could be awarded in the absence of objection taken by a party.² The substituted section authorises the Court to award costs if it finds that the claim or defence or any part thereof is false or vexatious, irrespective of the fact whether any objection has been taken by any party or not. It applies to all proceedings and suits including execution proceedings but has no application to appeals or revisions.

(2) **Section 42.**—Although a new section has been substituted in place of the old one, but there is no material change. It merely gives effect to the decision that the transferee Court has the same powers as it would have if the decree had been passed by itself.³

(3) **Section 47**—This section has been amended by the addition of an *Explanation* to the effect that a purchaser at an auction sale in execution of the decree shall be deemed to be a party to the suit in respect of the property purchased. This addition sets at rest the great conflict of opinion between different High Courts centring round the question whether an auction-purchaser should be deemed to be a party to the suit or not. A question, therefore, arising between the auction-purchaser and other parties to the suit shall be deemed, henceforth, to be a question arising between the parties to the suit.

(4) **Section 51**—A new clause (bb) has been added which authorises the Court in execution of a decree to transfer any property except by sale. It is open to the Court to mortgage or lease out the property to pay off the decretal amount, by attachment or without attachment of any property. It is, however, for the judgment-creditor to decide in which of the several modes he will execute his decree, and one of the modes now added is a transfer other than sale, of any

1. *Subodini v. Durga Charan*, 28 C 118. | 3. 1947 M 347 F. B.).
2. 1943 M 286.

property. The Court has no authority to refuse to order execution in the mode applied for by the decree-holder except in the circumstances mentioned in the proviso⁴.

(5) **Section 2**—An amendment of Section 2 is made, but it is not intelligible.

(6) **Section 102**—There is a very minor amendment and the words "five hundred rupees" at the end of the section have been substituted by "two thousand rupees." This means that where a suit of a small cause nature is tried not by a Small Cause Court, but by a Court in its ordinary jurisdiction, the decree or order will not be open to second appeal unless the value of the original suit exceeds two thousand rupees.

(7) **Section 144**—The original sub-section (1) applied only where a decree was varied or reversed, and had no application where an order (not amounting to a decree) was varied or reversed⁵. The substituted sub-section has included "orders" also within its scope and if an order is reversed or varied an application for restitution can now be made. It applies to all cases of variations and reversals, however they may have been made—it may be by the same Court⁶.

(8) **Section 145**—This section has been substituted by a new section. The old section dealt with sureties only, but the new section deals not only with sureties but also with properties given as security. It also adds an explanation under which persons entrusted with properties attached in execution of a decree can be dealt with as sureties and execution can be taken out against them.

Indian Limitation Act—Articles 11 and 182 have been amended. In cases governed by Article 11, the period of limitation has been reduced to six months instead of one year. Article 182 has been amended to extend the period of limitation from three years to six years.

Indian Lunacy Act—The amendment merely includes any other Civil Court, not a munsif, declared in that behalf and for such area as may be specified by the State Government by notification in the *Gazette*.

Oudh Laws Act—The amendment in Section 19 is merely procedural.

Provincial Insolvency Act—Sections 20, 59-A and 74 have been amended. The effect of these amendments is given below:—

(1) **Section 20**—deals with appointment of an interim receiver on the admission of a petition for insolvency. If the debtor himself is the petitioner a receiver shall be appointed of the whole of his property, but if the petition has been made by some person, other than the debtor a receiver may be appointed in respect of either the whole or a part only of the debtor's property.

(2) **Section 59-A**—Four new sub-sections have been added to this section. The object of these sub-sections is to provide a procedure for the recovery, of debts due to the insolvent, or the property in possession of other persons.

(3) **Section 74**—In this section the words "one thousand rupees" have been substituted for "five hundred rupees", and now it is necessary to show that the debtor is not possessed of property worth more than one thousand rupees, in order to obtain an order for the summary administration of the debtor's property.

THE CODE OF CIVIL PROCEDURE [UTTAR PRADESH] AMENDMENT ACT, 1948

[UTTAR PRADESH] ACT No. XXXV OF 1948

CONTENTS

Sections

1. Short title, commencement and extent.

Sections

2. Addition of explanation (1-A) to sub-section (1) of Section 60.

(PASSED BY THE [UTTAR PRADESH] LEGISLATIVE ASSEMBLY ON
MARCH 31, 1948, AND BY THE [UTTAR PRADESH]
LEGISLATIVE COUNCIL ON MAY 7, 1948)

(Received the assent of the Governor-General on August 11, 1948, under Section 76 of the Government of India Act, 1935, as adapted by the India (Provisional Constitution) Order, 1947, and was published in the [Uttar Pradesh] Government Gazette, dated August 28, 1948.)

An Act to amend the Code of Civil Procedure, 1908, in its application to the [Uttar Pradesh].

Whereas doubts have arisen about the true meaning of clause (c) of the proviso to sub-section (1) of Section 60, Code of Civil Procedure, 1908;

And whereas it is necessary to remove those doubts;

It is hereby enacted as follows:

Prefatory Note:—The following extract from the Statement of Objects and Reasons may be usefully noticed:—

"1. Section 60, Civil Procedure Code provides for exemption of houses and other buildings as also of other movable properties belonging to agriculturists and occupied by them. But divergent views have been held by Courts with regard to its application to exemption of a house mortgaged by an agriculturist from the sale under the mortgage decree.

"2. An amendment of Section 60, Civil Procedure Code, to this effect has therefore been found necessary. It is intended to make it clear that the houses of agriculturists even though they have been mortgaged by them will be exempt from sale in the same manner as houses not so mortgaged even in the case of decrees based on mortgage or charge.

"3. It shall apply to any sale that is to take place after the Act comes into force irrespective of whether the decree was passed prior to or after the Act came into force. The Bill seeks to introduce an amendment in the Civil Procedure Code to give relief in this respect to those agriculturists also whose houses are mortgaged", *vide* Not. No. 1236/VI-254-48, dated March 20, 1948 published in *Extra Gazette* dated March 20, 1948.

1. Short title, commencement and extent.—(1) This Act may be called the Code of Civil Procedure [Uttar Pradesh] Amendment Act, 1948.

(2) It shall come into force at once.

(3) It shall extend to the whole of the [Uttar Pradesh].

Legislative changes:—The words [Uttar Pradesh] were substituted for the words [United Provinces] by A. O. 1950 throughout the Act.

Note:—This Act has been extended to Rampur by Section 3 of Merged States (Laws) Act (Act LIX of 1949) from Jan. 1, 1950 and to Banaras, Tehri-Garhwal from 30th November, 1949, by Section 3 of Banaras and Tehri-Garhwal (Application of Laws) Order, 1949.

2. Addition of explanation (1-A) to sub-section (1) of Section 60.—After Explanation (1) of sub-section (1) of Section 60 of the Code of Civil Procedure, 1908, insert the following as Explanation (1-A):

"Explanation—(1-A) Particulars mentioned in clause (c) are exempt from sale in execution of a decree, whether passed before or after the commencement of the Code of Civil Procedure [Uttar Pradesh] Amendment Act, 1948, for enforcement of a mortgage or charge thereon".

Mortgage—effect.—Section 60 (c) exempted from attachment and sale the house of an agriculturist. But there was controversy about its sale, when it was specifically mortgaged and the decree on the basis of the mortgage was sought to be enforced. This controversy has now been set at rest by the addition of the explanation, and now the house of an agriculturist cannot be sold even in enforcement of a mortgage or charge thereon.

THE CODE OF CRIMINAL PROCEDURE (U. P.) AMENDMENT ACT, 1940

(U. P. Act No. IX of 1940)

CONTENTS

Sections

- 1. Short title.
- 2. Amendment of Section 162 of

Sections

Act V of 1898.

Prepared by His Excellency the Governor of the [Uttar Pradesh] in exercise of the powers vested in him by virtue of the Proclamation, dated November 3, 1939, issued under Section 93 of the Government of India Act, 1935.

(Received the assent of the Governor-General on August, 26, 1940, and was published in the [Uttar Pradesh] Government Gazette, on September, 7, 1940.)

An Act to amend the Code of Criminal Procedure, in its application to [Uttar Pradesh].

Preamble.—Whereas it is expedient to amend the Code of Criminal Procedure, 1898, in its application to the [Uttar Pradesh] for the purpose hereinafter appearing;

And whereas by the Proclamation, dated the third day of November, 1939, promulgated under Section 93 of the Government of India Act, 1935, the Governor of the [Uttar Pradesh] has assumed to himself all powers vested by or under the aforesaid Act in the [State] Legislature;

Now, therefore, the Governor in exercise of the powers aforesaid is pleased to make the following Act:—

1. Short title.—This Act may be called the Code of Criminal Procedure ([Uttar Pradesh] Amendment) Act, 1940.

Legislative changes :—The words [Uttar Pradesh] were substituted for the words [United Provinces] by A. O. 1950 throughout the Act.

Note :—It has been extended to Rampur with effect from 30-12-49 by Merged States (Laws) Act (Act LIX of 1949) and to Banaras and Tehri-Garhwal by Section 3 of Banaras and Tehri-Garhwal (Application of Laws) Order, 1949 with effect from 30-11-49. It has also been applied to the partially excluded areas of Jaunsar-Bawar Pargana of Dehra Dun and the portion of Mirzapur, South of Kaimur range in U. P. *vide*, N. t. No. 358/VI-620 dated July, 6, 1948.

2. Amendment of Section 162 of Act V of 1898.—In sub-section (2) of Section 162 of the Code of Criminal Procedure, 1898, after the figures "1872" the following words and figures shall be added, namely—

"or to affect the provisions of Section 27 of the Act."

Note :—This amendment is to counteract the effect of rulings in *Baldeo v. E¹* and *Thakur v. Crown²*.

THE CODE OF CRIMINAL PROCEDURE (UTTAR PRADESH AMENDMENT) ACT, 1948

(U. P. Act No. XXXVI of 1948)

CONTENTS

Sections

- | | |
|--|---|
| <p>FREAMEBLE</p> <p>1. Short title, extent and commencement.</p> | <p>2. Amendment of Section 406 of the Code.</p> <p>3. Amendment of Section 640-A of</p> |
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Sections

- | | |
|---------------------------|-----------------------------|
| <p>1. 1940 A L J 241.</p> | <p>2. I L R 1940 L 242.</p> |
|---------------------------|-----------------------------|

- the Code.
4. Deletion of Section 407 of the Code.
 5. Amendment of Section 408 of the Code.
 6. Substitution of Section 409 of the Code.
 7. Amendment of explanation to
 8. Section 435 (1) of the Code
 9. Amendment of Section 515 of the Code.
 10. Amendment of list V of Schedule III of the Code.
 11. Omission of item 12 in column 3 of Schedule IV of the Code.
 12. Disposal of pending appeals.
- (PASSED BY THE [UTTAR PRADESH] LEGISLATIVE ASSEMBLY ON APRIL 29, 1948, AND BY THE [UTTAR PRADESH] LEGISLATIVE COUNCIL ON MAY 7, 1948)

[Received the assent of the Governor-General on August 14, 1948, under Section 76 of the Government of India Act, 1935, and was published in the [Uttar Pradesh] Gazette, dated September 4, 1948.]

An Act further to amend the Code of Criminal Procedure, 1898 in its application to the [Uttar Pradesh], for certain purposes.

Preamble.—Whereas it is expedient to amend the Code of Criminal Procedure, 1898, in its application to the [Uttar Pradesh] for the purposes hereinafter appearing ;

It is hereby enacted as follows :

Prefatory Note :—The following extract from the Statement of Objects and Reasons may be usefully noticed :

“1. There has been a general demand for the separation of executive and judicial functions of Magistrates and it has been decided to withdraw from District Magistrate and other Magistrates appellate judicial work.

“2. The Code of Criminal Procedure ([Uttar Pradesh] Amendment) Bill is intended to achieve this object,” vide Not. No. 1737/VI-770-48 dated April, 20, 1948, published in Extraordinary [Uttar Pradesh] Gazette, dated April, 20, 1948.

1. Short title, extent and commencement.—(1) This Act may be called the Code of Criminal Procedure ([Uttar Pradesh] Amendment) Act, 1948.

(2) It extends to the whole of the [Uttar Pradesh].

(3) It shall come into force at once.

Legislative changes :—The words [Uttar Pradesh] were substituted for the words [United Provinces] by A. O. 1930 throughout the Act

Note :—This Act was applied to the partially excluded areas of Jaunsar-Bawar, pargana of the Dehra Dun District and the portion of Mirzapur District south of the Kaimur range in the Uttar Pradesh vide Notification No. 358/VI-620-48 dated July 6, 1949. It has also been extended to Rampur by Merger States (Laws) Act (Act LIX of 1949) with effect from first January 1950 and to the Banaras and Tehri-Garhwal by Banaras and Tehri-Garhwal (Application of Laws) Order, 1949, with effect from 30th December, 1949, vide Notification Nos. 3262 (1) and 3262 (2) dated 30th November, 1949 published in U. P. Gazette, Extraordinary, dated 30th November, 1949.

2. Amendment of Section 406 of the Code.—For Section 406 of the Code of Criminal Procedure, 1898 (hereinafter called “the Code”), following shall be substituted :

“406. Any person who has been ordered under Section 118 to give security for keeping the peace or for good behaviour may appeal against such order to the Court of Sessions :

Provided that nothing in this section shall apply to persons the proceedings against whom are laid before a Sessions Judge in accordance with the provisions of sub-section (2) or sub-section (3-A) of Section 123.”

- the Code.
4. Deletion of Section 407 of the Code.
 5. Amendment of Section 408 of the Code.
 6. Substitution of Section 409 of the Code.
 7. Amendment of explanation to
 8. Section 435 (1) of the Code
 9. Amendment of Section 515 of the Code.
 10. Amendment of list V of Schedule III of the Code.
 11. Omission of item 12 in column 3 of Schedule IV of the Code.
 12. Disposal of pending appeals.
- (PASSED BY THE [UTTAR PRADESH] LEGISLATIVE ASSEMBLY ON APRIL 29, 1948, AND BY THE [UTTAR PRADESH] LEGISLATIVE COUNCIL ON MAY 7, 1948)

[Received the assent of the Governor-General on August 14, 1948, under Section 76 of the Government of India Act, 1935, and was published in the [Uttar Pradesh] Gazette, dated September 4, 1948.]

An Act further to amend the Code of Criminal Procedure, 1898 in its application to the [Uttar Pradesh], for certain purposes.

Preamble.—Whereas it is expedient to amend the Code of Criminal Procedure, 1898, in its application to the [Uttar Pradesh] for the purposes hereinafter appearing ;

It is hereby enacted as follows :

Prefatory Note :—The following extract from the Statement of Objects and Reasons may be usefully noticed :

“1. There has been a general demand for the separation of executive and judicial functions of Magistrates and it has been decided to withdraw from District Magistrate and other Magistrates appellate judicial work.

“2. The Code of Criminal Procedure ([Uttar Pradesh] Amendment) Bill is intended to achieve this object,” vide Not. No. 1737/VI-770-48 dated April, 20, 1948, published in Extraordinary [Uttar Pradesh] Gazette, dated April, 20, 1948.

1. Short title, extent and commencement.—(1) This Act may be called the Code of Criminal Procedure ([Uttar Pradesh] Amendment) Act, 1948.

(2) It extends to the whole of the [Uttar Pradesh].

(3) It shall come into force at once.

Legislative changes :—The words [Uttar Pradesh] were substituted for the words [United Provinces] by A. O. 1930 throughout the Act

Note :—This Act was applied to the partially excluded areas of Jaunsar-Bawar, pargana of the Dehra Dun District and the portion of Mirzapur District south of the Kaimur range in the Uttar Pradesh vide Notification No. 358/VI-620-48 dated July 6, 1949. It has also been extended to Rampur by Merger States (Laws) Act (Act LIX of 1949) with effect from first January 1950 and to the Banaras and Tehri-Garhwal by Banaras and Tehri-Garhwal (Application of Laws) Order, 1949, with effect from 30th December, 1949, vide Notification Nos. 3262 (1) and 3262 (2) dated 30th November, 1949 published in U. P. Gazette, Extraordinary, dated 30th November, 1949.

2. Amendment of Section 406 of the Code.—For Section 406 of the Code of Criminal Procedure, 1898 (hereinafter called “the Code”), following shall be substituted :

“406. Any person who has been ordered under Section 118 to give security for keeping the peace or for good behaviour may appeal against such order to the Court of Sessions :

Provided that nothing in this section shall apply to persons the proceedings against whom are laid before a Sessions Judge in accordance with the provisions of sub-section (2) or sub-section (3-A) of Section 123.”

Scope :—The object of this Amendment Act is to take away the appellate judicial powers of a District Magistrate and vest them in the Sessions Judge.

3. Amendment of Section 406-A of the Code.—In Section 406-A of the Code, ‘comma’ and ‘dash’ along with all other words *after* the words “against such order” shall be omitted and the words “to the Court of Sessions”, shall be substituted.

4. Deletion of Section 407 of the Code.—Section 407 of the Code shall be omitted.

5. Amendment of Section 408 of the Code.—For paragraph 1 of Section 408 of the Code, the following shall be substituted.

“Any person convicted on a trial held by an Assistant Sessions Judge, a District Magistrate or any other Magistrate, or any person sentenced under Section 349 or in respect of whom an order has been made, a sentence has been passed under Section 380 by a Sub-Divisional Magistrate of the Second Class or a Magistrate of the First Class or the District Magistrate, may appeal to the Court of Sessions.”

6. Substitution of Section 409 of the Code.—For Section 409 of the Code *substitute* the following :

“409. An appeal to the Court of Sessions or Sessions Judge shall be heard by the Sessions Judge or the Additional Sessions Judge or if it is in respect of conviction, order or sentence, ordered, made or passed, by a Sub-Divisional Magistrate of the Second Class or any other Magistrate of the Second or Third Class, by the Assistant Sessions Judge :

Provided that an Additional Sessions Judge or Assistant Sessions Judge shall hear only such appeals as the [State] Government may by general or special order direct, or as the Sessions Judge of the Division may make over to him.”

7. Amendment of explanation to Section 435 (1) of the Code.—In the explanation at the end of sub-section (1) of Section 435 of the Code, the words “whether exercising original or appellate jurisdiction” shall be omitted.

8. Amendment of Section 515 of the Code.—In Section 515 of the Code *for* the words “to the District Magistrate” the words “to the Sessions Judge” shall be substituted.

9. Amendment of the list V of Schedule III of the Code.—In list V of the Schedule III of the Code, items 9, 9-A, 10 and 19 shall be omitted.

10. Omission of item 12 in column 3 of Schedule JV of the Code.—Item 12 in column 3 of the Fourth Schedule of the Code shall be omitted.

11. Disposal of pending appeals.—All appeals of the nature referred to in Sections 2, 3, 5 and 8, which at the date of the commencement of this Act, are pending before any District Magistrate of the First Class, shall, as from the date this Act comes into force, be deemed to have been transferred to the Court of Sessions, having jurisdiction and shall be disposed of as if they had been appeals instituted in such Court.

THE CODE OF CRIMINAL PROCEDURE (UTTAR PRADESH AMENDMENT) ACT, 1948

(U. P. Act No. XLVI of 1948)

CONTENTS

Sections

Sections

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| PREAMBLE
1. Short title, extent and commencement. | 2. Addition of a new Section 123-A.
3. Addition of new Section 197-A.
4. Amendment of Section 40. |
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**(PASSED BY THE U. P. LEGISLATIVE ASSEMBLY ON OCTOBER 29, 1948 AND
THE U. P. LEGISLATIVE COUNCIL ON NOVEMBER 5, 1948)**

(Received the assent of the Governor-General on December 22, 1948, under Section 76 of the Government of India Act, 1935, as adapted by the India (Provisional) Constitution Order, 1947, and published in the [Uttar Pradesh] Gazette, Extraordinary, dated December 27, 1948.)

An Act further to amend the Code of Criminal Procedure, 1898, in its application to the [Uttar Pradesh] for certain purposes.

Preamble.—Whereas it is expedient further to amend the Code of Criminal Procedure, 1898, in its application to the [Uttar Pradesh] for purposes hereinafter appearing;

It is hereby enacted as follows :

Prefatory Note :—The following extracts from the Statement of Objects and Reasons may be usefully noticed :—

“1. It has been felt that when security is demanded for the performance or observance of certain conditions or restrictions under any enactment other than the Code of Criminal Procedure there should be some provision by which the failure to furnish such security should, where the failure to perform or observe the conditions or restrictions is punishable with imprisonment, automatically lead to imprisonment for the prescribed period as has been laid down in Section 123 of the Code of Criminal Procedure for failure to furnish security demanded under Sections 107 to 110, Code of Criminal Procedure. Accordingly another Section 123-A is proposed after the existing Section 123 of the Code of Criminal Procedure.

“2. It has also been felt that when a Commissioner is appointed under orders of a competent court, he needs the protection of the court in respect of unnecessary harassment or litigation by parties. Accordingly another Section 197-A is proposed to be added after the existing Section 197 of the Code of Criminal Procedure.

“3. It is also thought that if a person is kept in prison otherwise than under the sentence or remand of a competent court the Government should have the power to order him to be let out on parole. Accordingly Section 401 (4-A) of the Code of Criminal Procedure is proposed to be amended” *vide* Not. No. 4112/VI-825 dated September 13, 1948 published in U. P. *Gazette*, dated September 18, 1948, part VII p. 3.

Note :—This Act was applied to the partially excluded areas of Jaunsar-Bawar, pargana of the Dehra Dun district and the portion of Mirzapur District south of the Kaimur range in the Uttar Pradesh *vide* Notification No. 358/VI 620-48 dated July 6, 1949. It has also been extended to Rampur by Merger States (Laws) Act (Act LIX of 1949) with effect from 1st January, 1950 and to the Banaras and Tehri-Garhwal by Banaras and Tehri-Garhwal (Application of Laws) Order, 1949, with effect from 30th December, 1949. *vide* Notification Nos. 3262 (1) and 3262 (2) dated 30th November, 1949 published in U. P. *Gazette*, Extraordinary dated 30th November, 1949.

1. Short title, extent and commencement.—(1) This Act may be called the Code of Criminal Procedure [Uttar Pradesh] (Second Amendment) Act, 1948.

(2) It extends to the whole of the [Uttar Pradesh].

(3) It shall come into force at once.

Legislative changes :—The words [Uttar Pradesh] were substituted for the words [United Provinces] by A. O. 1950 throughout the Act.

2. Addition of a new Section 123-A.—After Section 123 of the

Code of Criminal Procedure, 1898 (hereinafter called "the Code") add the following as Section 123-A :

"123-A. Imprisonment in default of security.—(1) If any person ordered to give security under any enactment for the time being in force for the due performance or enforcement of any restriction or condition which may lawfully be imposed under such enactment does not give such security on or before the date on which the security is required to be furnished, he shall, if the failure to perform or enforce the restriction or condition is punishable with imprisonment under such enactment be committed to prison or if he is already in prison be detained in prison until such period expires or until within such period he gives security in accordance with the order :

"Provided that the imprisonment shall be simple.

"(2) If the security is tendered to the officer-in-charge of the jail, he shall forthwith refer the matter to the authority competent to take the security under the order and shall await the orders of such authority".

3. Addition of a new Section 197-A.—After Section 197 of the Code of Criminal Procedure, 1898, add the following as Section 197-A :

"197-A. Prosecution of Commissioner appointed by Court.—When any person, who is Commissioner appointed by a Court under the provisions of the Code of Civil Procedure, 1908, is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his functions as Commissioner no Court shall take cognizance of such offence except with the previous sanction of the Court which appointed him as Commissioner."

4. Amendment of Section 401.—In sub-section (4-A) of Section 401 of the Code between the words "Criminal Court" and "under" the words "or other authority" shall be inserted.

THE CODE OF CRIMINAL PROCEDURE (UTTAR PRADESH AMENDMENT) ACT, 1949

(UTTAR PRADESH ACT No. VIII OF 1949)

CONTENTS

Sections:	Sections:
PREAMBLE	3 Inscription of a new Form XIV-A in Schedule V of Act V of 1898.
1. Short title, extent and commencement.	4. Amendment of Form XV of Schedule V of Act V of 1898.
2. Amendment of Section 123-A of Act V of 1898.	

(PASSED BY THE [UTTAR PRADESH] LEGISLATIVE COUNCIL ON JANUARY 20, 1949, AND BY THE [UTTAR PRADESH] LEGISLATIVE ASSEMBLY ON MARCH 7, 1949)

(Received the assent of the Governor-General on March 30, 1949, under Section 76 of the Government of India Act, 1935, as adapted by the India (Provisional) Constitution Order, 1947, and was published in the [Uttar Pradesh] Government Gazette dated June 11, 1949)

An Act further to amend the Code of Criminal Procedure, 1898, in its application to the [Uttar Pradesh] for certain purposes.

Preamble.—Whereas it is expedient further to amend the Code of

Criminal Procedure, 1898, in its application to the [Uttar Pradesh] for purposes hereinafter appearing;

It is hereby enacted as follows :

1. Short title, extent and commencement.—(1) This Act may be called the Code of Criminal Procedure [Uttar Pradesh] Amendment Act, 1949.

(2) It extends to the whole of the [Uttar Pradesh].

(3) It shall come into force at once.

Legislative changes:—The words [Uttar Pradesh] were substituted for the words [United Provinces] by A. O. 1950 throughout the Act.

Note:—This Act was applied to the partially excluded areas of Jaunsar-Bawar of the Dehra Dun District and the portion of Mirzapur District south of the Kaimur range in the [Uttar Pradesh], *vide* Notification no 358/VI-620-48 dated July 6, 1949. This Act has also been extended to Rampur State with effect from December 30, 1949, by Section 3 of Rampur (Application of Laws) Act (U. P. Act XII of 1950) published in *Extra. U. P. Gazette*, dated March 16, 1950, and to Banaras and Tehri-Garhwal with effect from November 30, 1949, by Section 3 of Banaras (Application of Laws) and Tehri-Garhwal (Application of Laws) Orders 1949, *vide* Not. No. 3262 (1) and 3262 (2)/XVII—ergo, dated November 30, 1949, published in *Extra. U. P. Gazette*, dated November 30, 1949.

2. Amendment of Section 123-A of Act V of 1898.—In Section 123-A of the Code of Criminal Procedure, 1898 (hereinafter called “the Code”), the words “for any specified period” shall be inserted after the words “to give security”.

3. Insertion of a new Form XIV-A in Schedule V of Act V of 1898.—After Form XIV in Schedule V of the Code, the following shall be inserted as Form XIV-A :

“XIV-A—Warrant of commitment on failure to find security for the due performance or enforcement of any restriction or condition.

(See Section 123-A)

To the Superintendent (or Keeper) of the jail at.....

Whereas an order has been duly recorded requiring.....
.....(name) to furnish security for the due performance or enforcement of restriction and condition for the term of(state the period) by entering into bond (with one surety or two or more sureties as the case may be) himself for Rs.....and the said surety or each of the said sureties for Rs.....

And whereas the said.....(name) was duly required by me to furnish the security in accordance with the order but has failed to comply with the said order and for such default is liable to simple imprisonment for.....(state the term) unless the said security be sooner furnished.

This is to authorize and require you the said Superintendent (or Keeper), to receive the said(name) into your custody, together with this warrant and him safely to keep in the said jail for the said period of(term of imprisonment) unless he shall, in the mean time, be lawfully ordered to be released and return this warrant with an endorsement certifying the manner of its execution.

Given under my hand, thisday of19.....

(Signature of the authority
authorized to take security in accordance
with the order).

4. Amendment of Form XV of Schedule V of Act V of 1898.—In Form XV of Schedule V of the Code, for the words and figures “see Sections 123 and 124” the following shall be substituted, namely :

“See Sections 123, 123-A and 124”.

THE CODE OF CRIMINAL PROCEDURE (UTTAR PRADESH AMENDMENT) ACT, 1951

(U. P. ACT NO. XXVIII OF 1951)

CONTENTS

Sections	Sections
1. Short title, extent and commencement.	V of 1898.
2. Amendment of Section 498 of Act	3. Amendment of Section 528 of Act V of 1898.

AUTHORITATIVE ENGLISH TEXT OF THE CODE OF CRIMINAL PROCEDURE (UTTAR PRADESH SANSHODHAN) ADHINIYAM, 1951

An Act to amend the Code of Criminal Procedure, 1898, in its application to Uttar Pradesh, for certain purposes.

Whereas it is expedient to amend the Code of Criminal Procedure, 1898, in its application to Uttar Pradesh, for the purposes hereinafter appearing ;

It is hereby enacted as follows :

Prefatory Note:—For Statement of Objects and Reasons, please see U. P. Gazette (Extraordinary), dated August 27, 1951.

1. Short title, extent and commencement.—(1) This Act may be called the Code of Criminal Procedure (U. P. Amendment) Act, 1951.

(2) It extends to the whole of Uttar Pradesh.

(3) It shall come into force at once.

Note:—The Act was passed in Hindi by the Uttar Pradesh Legislative Assembly on September 6, 1951, and by the Uttar Pradesh Legislative Council on September 11, 1951.

Received the assent of the President on October 31, 1951, under Article 201 of the Constitution of India and was published in the *Uttar Pradesh Gazette Extraordinary*, dated November 12, 1951.

2. Amendment of Section 498 of Act V of 1898.—The existing Section 498 of the Code of Criminal Procedure, 1898 (hereinafter called the Principal Act) shall be re-numbered as sub-section (1) of Section 498 and the following shall be added as sub-section (2) thereof—

“(2) The power conferred by sub-section (1) on a Court of Sessions shall, in respect of such cases or class of cases as may be notified, be exercisable by an Additional Sessions Judge or Assistant Sessions Judge authorised in that behalf by notification in the official *Gazette* by the State Government.”

3. Amendment of Section 528 of Act V of 1898.—In Section 528 of the Principal Act—

(1) In sub-section (1-A) for the words “any case or appeal which he has made over to any Additional Sessions

"Judge" the words "or withdraw any case or appeal pending before any Additional Sessions Judge" shall be substituted.

- (2) In sub-section (1-B) for the words "where a Sessions Judge withdraws or recalls a case under sub-section (1) or recalls a case or appeal under sub-section (1-A)" the words "where a Sessions Judge withdraws or recalls a case or appeal under sub-section (1) or sub-section (1-A)" shall be substituted.

UNITED PROVINCES COLLECTION OF MUNICIPAL AND OTHER TAXES (ACT NO II OF 1899)

CONTENTS

Sections

1. Extent and commencement.
2. Definition.
3. Power to make agreement to

Sections

- collect taxes.
4. Exemption from stamp duty.
5. Powers to recover tax.
- 6.

[Received the assent of the Lieutenant-Governor on the 10th February, 1899, and of the Governor-General on the 11th May, 1899, and was published¹ under Section 40 of the Indian Councils Act, 1861, on the 10th June, 1899.]

An Act to provide for the Collection in certain cases of Municipal and other Taxes by Railway Administrations.

Whereas it is expedient to provide for the collection in certain cases of municipal and cantonment taxes by railway administrations;

It is hereby enacted as follows :

Prefatory Note.—For S. O. R., see *Gaz.*, 1898, Pt. V, d. July 16, p. 6f; for R. S. Com, see *ibid.*, d. Nov., 12, p. 1; for discussion, see L. C. Pro. in *ibid.*, Pt. VI, p. 139, and *ibid. Extra*, d. Feb. 1, 1899, p. 13.

1. Extent and commencement.—(1)² [It shall extend³ to the whole of Uttar Pradesh], and

(2) It shall come into force at once.

2. Definition.—(1) "Railway administration" shall have the meaning assigned to that expression in Section 3 (6) of the Indian Railways Act, 1890.

(2) "Municipal tax" and "Cantonment tax" mean respectively any tax, toll, duty, fee, or other charge duly imposed under the United Provinces Municipalities Act, 1883⁴, or the Cantonments Act, 1889.⁵

3. Power to make agreement to collect taxes.—It shall be lawful for a railway administration, with the previous sanction of the

1. See *Gaz.*, 1899, Pt. IV, d. June 10.
 2. Subs. for sub-soc (2) of S. 1 by the A. O. 1950, which was successively amended by A. O. 1937 and U. P. Act I of 1964.
 3. This Act has been declared to be in force and extended to Rampur by S. 3 and Sch. of the Rampur (Application of Laws) Act, 1950 (U. P. Act XII of 1950) w. e. f. December 30, 1949 and to Banaras

and Tehri-Garhwal by Banaras and Tehri-Garhwal (Application of Laws) Order, 1949 w. e. f. November 30, 1949.

4. For the method of citing this Act, see S. 28 (2) of U. P. Act I 1904. See now the U. P. Municipalities Act, 1916 (U. P. Act II of 1916).
 5. See now the Cantonments Act, 1924 (Act II of 1924).

[Government or Governments concerned]^{1, * * *} to agree with a municipal board or a cantonment committee to collect municipal or cantonment taxes leviable in respect of persons, animals, carriages, or goods conveyed to or from any station on its railway situate within municipal or cantonment limits on such terms as may be agreed upon between such railway administration and municipal board or cantonment committee respectively.]

³[For the purposes of this section the Central Government shall be deemed to be a Government concerned, if either of the parties to the agreement is a cantonment committee or ⁴[a railway administration] and the [State Government]⁵ shall be deemed to be a Government concerned, if either of the parties to the agreement is a Municipal Board ⁶* * *].

4. Exemption from stamp duty.—No agreement made under this Act shall be chargeable with stamp duty.

5. Powers to recover tax.—Where any such tax as assessed is collected by a railway administration, the railway administration shall have all the same powers and remedies for the recovery thereof as though the same were a rate or fare which such railway administration is empowered to levy under the Indian Railways Act, 1890.

6. All agreements made before the commencement of this Act between any railway administration and any municipal board or cantonment committee, and all municipal taxes and cantonment taxes heretofore collected by any railway administration in pursuance of any such agreement which might have been lawfully made or collected if this Act had been in force at the time, shall be deemed to have been made or collected under the provisions of this Act.

THE UTTAR PRADESH COMMUTATION OF RENT (REGULARISATION OF PROCEEDINGS) ACT, 1952

(U. P. Ac^t No. XIV of 1952)

CONTENTS

Sections

1. Short title, extent and commencement.
2. Definitions.
3. Orders regarding commutation of rent under Section 87 of U.P. Act III of 1901 to be valid.
4. Review of the order.
5. Copy of the order to be attached with the application.
6. Notice to be issued to tenant.

Sections

7. Disposal of the application.
8. Cash rents fixed to be valid.
9. Order varying the rent to take effect from the date of the original order.
10. Difference in rent to be recoverable from the tenant.
11. Appeals.
12. Rules.

SCHEDULE

AUTHORITATIVE ENGLISH TEXT OF THE UTTAR PRADESH LAGAN KA NAQADI MEN PARIVARTAN (VYAVHARAON KA NIYAMAN) ADHINIYAM, 1952

1. Subs for [L. G.] by the A.O. 1937.
2. The words [and of the G.-G.-in-C.] omit. by S. 2 and Sch. 1 of Act XXXVIII of 1920.
3. Ins. by the A. O. 1937.
4. Subs. for [the railway administration of a Federal Railway or of an

- Indian State Railway] by the A.O. 1950.
5. Subs. by the A. O. 1950 for [Provl. Govt.].
6. The words [or the railway administration of a minor railway] omit. by the A. O. 1950.

An Act to regularise certain proceedings relating to commutation of rents

Whereas it is expedient to regularise certain proceedings relating to commutation of rents;

It is hereby enacted as follows;

Prefatory Note.—For S. O. R. see *Gaz. Extra.* d. May 19, 1952 pp. 8—11; for discussion, see L. A. Pro., d. May 27 and 31, 1952, in Vol. CII, pp. 263 and 525, d. July 16, 1952 in Vol. CIV, p. 141 and L. C. Pro., d. May 21 and 24, 1952, in Vol. XXV, p. 23, d. July 11, 1952, in Vol. XXVI.

Passed in Hindi by the Uttar Pradesh Legislative Council on May 24, 1952, and by the Uttar Pradesh Legislative Assembly on May 31, 1952.

Received the assent of the Governor on June 13, 1952, under Article 200 of the Constitution of India and was published in the *Gaz. Extra.* d. June 23, 1952.

1. Short title, extent and commencement.—(1) This Act may be called the U. P. Commutation of Rent (Regularisation of Proceedings) Act, 1952.

(2) It extends to the whole of Uttar Pradesh, except the areas specified in the Schedule.

(3) It shall come into force at once.

2. Definitions.—In this Act unless there is anything repugnant in the subject or context, the words and expressions “Commissioner”, “landholder”, “rent”, “Settlement Officer”, and “tenant” shall have the meaning assigned to them in the U. P. Land Revenue Act, 1901.

Landholder.—Defined by Section 3(11) of the U. P. Tenancy Act:

“Landholder means the person to whom rent is, or but for a contract express or implied would be payable, but except in Chapter VI and Chapter XIII does not include an assignee of rent or a person who has lost the proprietary or other interest by virtue of which rent became payable to him”.

Rent.—Defined by Section 3(18) of the U. P. Tenancy Act: “Rent means whatever is, in cash or kind or partly in cash or partly in kind, payable on account of the use or occupation of land or on account of any right in land and in Chapter VII, except where the contrary intention appears, includes Sayar.”

Explanation—A share of the timber or its value deliverable or payable to the landholder on a sale of trees by a grove-holder in rent.”

For a fuller discussion see commentary under the U. P. Zamindari Abolition and Land Reforms Act.

Tenant—Defined by Section 3 (23) of the U. P. Tenancy Act: “Tenant, means the person by whom rent is but for a contract express or implied would be, payable and, except when the contrary intention appears, includes a sub-tenant but does not include a mortgagee of proprietary or under-proprietary rights, a grove-holder, a rent-free grantee, a grantee at favourable rate of rent or, except as otherwise expressly provided by this Act, an under-proprietor, a permanent lessee or a thekadar.”

3. Orders regarding commutation of rent under Section 87 of U. P. Act III of 1901 to be valid.—Subject to the provisions of Section 4, an order commuting to a fixed cash rent a rent—

(a) hitherto payable in kind, or

(b) based on an estimate or appraisement of the standing crop, or

(c) on rates varying with the crops sown or partly in one and partly in another of such ways,

passed before the commencement of the Act by a Settlement Officer in the purported exercise of the powers conferred by sub-sections (2) and (3)

of Section 87 of the U. P. Land Revenue Act, 1901, in any proceeding instituted after April 1, 1950, shall not be invalid on the ground merely that an opportunity to appear and be heard was not given to the landholder before the passing of the said order.

Scope.—This section provides that the orders of commutation of rent from kind into cash passed under Section 87 of the U. P. Land Revenue Act, 1901 by a Settlement Officer, in any proceedings after April 1, 1950 shall be valid even if no opportunity to appear and be heard was given to the landholder. The landholder had of course a right to apply for review under Section 4 within ninety days from the date of the commencement of the Act.

4. Review of the order.—Where any order has been passed as aforesaid and has become final before the commencement of this Act, the landholder may, if he claims that the cash rent so fixed is less than the amount which would be payable in accordance with the circle rates applicable, apply at any time within ninety days from the said commencement, to the Settlement Officer concerned for a review of the said order.

5. Copy of the order to be attached with the application.—The application for review under Section 4 shall be accompanied by a copy of the order sought to be reviewed together with a statement giving the circle rates applicable and the cash rent claimed by the landholder.

6. Notice to be issued to tenant.—If the application is in proper form and has been presented within the period allowed therefor under Section 4, the Settlement Officer shall register it and order notice to be issued to the tenant.

7. Disposal of the application.—Where it appears to the Settlement Officer after hearing the tenant, if he appears, that the cash rent fixed is—

- (i) not less than the amount computed in accordance with circle rates, he shall reject the application,
- (ii) less than the amount aforesaid, he shall review the order and vary the cash rent fixed in accordance with the principles governing proceedings under Section 87 of the U. P. Land Revenue Act, 1901.

8. Cash rents fixed to be valid.—Notwithstanding anything contained in any law the cash rent fixed by the order referred to in Section 3 or, where the cash rent so fixed has been enhanced in accordance with the provisions of Section 7, the enhanced rent shall be deemed to be the cash rent of the holding for all purposes and on all occasions.

9. Order varying the rent to take effect from the date of the original order.—The order under Section 7 varying the cash rent shall take effect from the date of the order sought to be reviewed.

10. Difference in rent to be recoverable from the tenant.—Where the Settlement Officer has varied the cash rent fixed, the landholder shall, notwithstanding anything in any law, order or decree to the contrary, be entitled to recover from the tenant the enhanced rent so fixed or any portion remaining unpaid.

11. Appeals.—Any person aggrieved by an order of the Settlement Officer under Section 7 may appeal to the Commissioner within sixty

days from the date thereof and the order of the Commissioner in appeal shall be final and conclusive.

12. Rules.—(1) The State Government may make rules for the purpose of carrying into effect the provisions of this Act.

(2) Without prejudice to the generality of the foregoing power, such rules may provide—

(a) for the procedure to be followed in appeals, applications and other proceedings under this Act, and

(b) for the fees to be paid in respect of appeals and applications under this Act.

SCHEDULE

(See Section 1)

Areas to which the Act will not apply

1. The areas specified in the first schedule to the U. P. Tenancy Act, 1939.

2. Pargana of Kaswar Raja in the district of Banaras.

3. Any area which on the 30th day of November, 1949 was included in—

(i) Banaras State as defined in the Banaras State (Administration) Order, 1949.

(ii) Rampur State as defined in the Rampur (Administration) Order, 1949.

(iii) Tehri-Garhwal State as defined in the Tehri-Garhwal (Administration) Order, 1949.

4. Pargana Jaunsar-Bawar of Dehra Dun District and the area of Mirzapur District in the South of the Kaimur Range.

THE U. P. CONSOLIDATION OF HOLDINGS ACT, 1953

(U. P. Act No. V of 1954)

CONTENTS

Sections

1. Short title, extent and commencement.
- 2.
3. Definition.

CHAPTER II

REVISION AND CORRECTION OF MAPS AND RECORDS

4. Declaration regarding consolidation.
5. Effect of declaration.
6. Cancellation of declaration under Section 4.
7. Examination of Revenue records.
8. Revision and correction of records.
9. Publication of corrected records.
10. Declaration regarding revision of records,

Sections

- 10-A. Partition of holdings.
- 10-B. Amalgamation of holdings.
11. Preparation of statement of plots and tenure-holders.
12. Objection on the statement.

CHAPTER III

PREPARATION OF CONSOLIDATION

SCHEME

13. Consolidation Scheme.
14. Statement of Principles.
15. Principles to be followed in the preparation of the Statement of Principles.
16. Publication and Objections on the Statement of Principles.
17. Disposal of Objections on the Statement of Principles.
18. Confirmation of the Statement

- of Principles.
 19. Statement of Proposals.
 20. Objections on the Statements.
 21. Disposal of objection on the Statement.
 22. Objection relating to title in land.
 23. Confirmation of the Statement of Proposal.

CHAPTER IV ENFORCEMENT OF THE SCHEME

24. Date of coming into force of the scheme.
 25. Allotment of new holdings.
 26. Date of entering Possession.
 27. New revenue records.
 28. Delivery of Possession.
 29. Compensation.
 30. Rights after consolidation,
 31. Encumbrances.
 32. Right to transfer holding.
 33. Costs.
 34. Objection on enforcement.
 35. Disposal of objection.
 36. Reference to Arbitration,

- CHAPTER V
MISCELLANEOUS**
 37. Arbitration.
 38. Powers to enforce attendance of witnesses and in certain

- matters,
 39. Power for production of documents, etc.
 40. Proceedings before Settlement Officer (Consolidation) Consolidation Officer and Assistant Consolidation Officer to be judicial proceedings.
 41. Application of U. P. Land Revenue Act, 1901.
 42. Officers and authorities.
 43. Land Management Committee.
 44. Delegation.
 45. Powers of Officers to enter upon land for purpose of survey and demarcation.
 46. Penalty for destruction, injury or removal of survey marks.
 47. Appeals etc. to be allowed by Act.
 48. Power of Director of Consolidation to call for records and to revise orders.
 48-A. Special provisions with respect to evacuee property.
 49. Bar to Civil Court Jurisdiction.
 50. Exemption from court-fees.
 51. No instrument necessary to effect transfer.
 52. Close of Consolidation operation.
 53.
 54. Rules.

[AUTHORITATIVE ENGLISH TEXT OF THE UTTAR PRADESH JOT CHAKBANDI ADHINIYAM, 1953]

An Act to provide for the consolidation of agricultural holdings in Uttar Pradesh for the development of agriculture

The Act was passed in Hindi by the Uttar Pradesh Legislative Assembly on April 2, 1953 and by the Uttar Pradesh Legislative Council on April 30, 1953.

Received the assent of the President on March, 1954, under Article 201 of the Constitution of India and was published in the *Uttar Pradesh Gazette Extraordinary*, dated March 8, 1954.

Whereas it is expedient to provide for the consolidation of agricultural holdings in Uttar Pradesh for the development of agriculture :

It is hereby enacted as follows :

Prefatory Note.—Statement of Objects and Reasons of the Act are as below :—

"After the enforcement of the U. P. Zamindari Abolition and Land Reforms Act, 1950, there was naturally a pressing demand for the consolidation of holdings in the State. Since the complicated and numerous types of tenures, both proprietary, and cultivatory, the greatest stumbling block in the way of successful consolidation of holdings, have been abolished it is an opportune time to start this work. The advantages of having in compact blocks all the land farmed by one family need only be briefly mentioned. Boundary lines would be reduced in number and extent, saving land and diminishing boundary disputes, larger fields would be possible and time saved in making trips to the fields. Further if land were all in one piece, barriers, such as fences, hedges or ditches could be erected to obtain privacy and prevent trespassing, thieving and gleaning. The control of irrigation and drainage water would be easier; control of pests, insects and disease would also be less difficult. In August, 1952, Government, therefore, appointed a Committee under the Chairmanship of the Revenue Minister to draw a detailed scheme for achieving consolidation of holdings in the State as early as possible and to suggest amendments to the U. P. Consolidation of Holdings Act,

1939. The Committee after examining the reasons for failure of the scheme under the Act of '33 and the report of the sub-committee which studied the consolidation of holdings scheme of Punjab (India) has recommended a new scheme for a co-ordinated plan for the general development of the villages on the pattern of the Punjab. A copy of the Committee's report is enclosed.

2. The main features of the Bill are :

- (a) It will be for Government to select the district or the local area in which the work will start.
- (b) Before the work starts a notification will issue placing the area under consolidation operations.
- (c) The effect of the issue of the notification will be that the work relating to the preparation and correction of annual registers and records-of-rights will devolve upon the staff appointed for consolidation of holdings till another information crossing the operations is issued.
- (d) The Assistant Consolidation Officer shall carry out the work in close association with the Land Management Committees. This officer has not been given any powers to finalise anything at any stage of the work. He shall have to accept the advice tendered by the Land Management Committees and if he disagrees with the Committee he shall refer the matter for higher orders.
- (e) The consolidation proceedings will be drawn up, followed by actual proposals. Estates and land on which cultivators acquire rights of *asamis* under the *gava samajes* have been excluded from the provisions of the scheme.
- (f) Not only the Assistant Consolidation Officer but the Consolidation Officer and the Settlement Officer (Consolidation) shall have to remain in very close touch with the village in which operations are being carried out and will not pass any orders on an objection or an appeal unless they have inspected the locality.
- (g) In order to avoid long drawn out litigation the final decision in disputes regarding rights and title will be that of an Arbitrator who will be an Assistant Collector, First Class, and will be appointed by the Director of Consolidation. The latter will have revisional powers in all matters except those decided by the Arbitrator.
- (h) Appointment of a Director and Assistant Director of Consolidation as the central organizing and directing authorities and that of the Settlement and the Consolidation Officers at the district level.
- (i) Exclusion of the consolidation proceedings from the jurisdiction of Civil Courts.
- (j) Presumption of finality and conclusiveness has been given to the final entries in the records-of-rights prepared in the concluding stages of the operations so as to save the people from future litigation." *vide U. P. Gazette Extra*, dated March, 7, 1953.

CHAPTER I

PRELIMINARY

1. **Short title, extent and commencement.**—(1) This Act may be called the U. P. Consolidation of Holdings Act, 1953.

(2) It extends to the whole of Uttar Pradesh.

(3) This section shall come into force at once and the remainder of the Act shall come into force on such date as the State Government may, by notification in the official *Gazette*, appoint in this behalf and different dates may be appointed for different parts of Uttar Pradesh.

Note :—The Sections 2 to 54 of the Act came into force *w. e. f.* July, 24, 1954, in all the districts of U. P., except the districts of Naini Tal, Almora, Garhwal,

Tehri-Garhwal, Dehra Dunnd, Jalaun, Hamirpur, Banda a the portion of Mirzapur District South of Kaimur Range, *vide* U. P. Government Notification No. 2564/(4)-A-813-54 dated July, 24, 1954, published in U. P. *Gazette* dated July 24, 1954, Part 1-A, p. 1381.

2. The U. P. Consolidation of Holdings Act, 1939, is hereby repealed.

3. Definition.—In this Act unless there is anything repugnant in the subject or context,--

- (1) "Assistant Consolidation Officer" means an officer appointed by the State Government under Section 42 to perform the duties of an Assistant Consolidation Officer under this Act ;
- (2) "Consolidation" means the re-arrangement of holdings in any area between the several tenure-holders entitled thereto in such a way as to make the holdings held by them as such more compact.

Holding—meaning.—Holding has been defined by Section 3 (7) of the U. P. Tenancy Act :

"Holding means a parcel or parcels of land held under one lease, engagement or grant or in the absence of such lease, engagement or grant, under one tenuro and in the case of *thekadar* includes the *theka* land".

Accretions to the holding if gradual and slow would also form part of the holding. a

Tenure-holder.—See Section 3 (11) of the Act.

Grove—meaning.—Grove has been defined by Section 3 (6) of the U. P. Tenancy Act in connection with "grove-land"; it means "any specific piece of land in a *mahal* or *mahals* having trees planted there in such numbers that they preclude or when full grown will preclude, the land or any considerable portion thereof from being used primarily for any other purposes, and the trees on such land constitute a grove". The definition makes it clear that in order to constitute a grove, the trees ought to have been so planted that the land may not be used primarily for another purpose e. g., agricultural operations, b

Agricultural year.—Defined by Section 3 (2) of the U. P. Tenancy Act :

"Agricultural year means the year commencing on the 1st day of July and ending on the 30th day of June".

Fluvial action.—It means the deposit of silt on land left behind by a river after floods.

[**Explanation.**—For the purposes of this clause holding shall not include—

- (i) land which was grove in the agricultural year immediately preceding the year in which the notification under Section 4 has been issued in respect of the area ;
- (ii) land subject to fluvial action or intensive soil erosion]¹.

²[(2-A) **Consolidation Committee** means the Land Management Committee constituted under Section 121 of the U. P. Zamindari Abolition and Land Reforms Act, 1950, and includes a sub-committee constituted under sub-section (1)

- a. *Murari Lal v. Ram Ruch*, 11 R. D. 215.
 b. *Sheo Balak v. Nabi Bux* 1935 R. D. 382.
 1. *Subs. by S. 2 of U. P. Act XIII of 1955 which was previously Subs by S. 2 of U. P. Act XXVI of 1954.*

2. Added by S. 2 of U. P. Act XXVI of 1954 and the words (and includes a sub-committee constituted..... of the said section) in it have been *Subs.* for the words "and includes a sub-committee constituted under Section 43" by U. P. Act XIII of 1955.

of Section 43 and a committee nominated under sub-section (1-A) of the said section.

Land Management Committee.—This Committee is established under the U. P. Zamindari Abolition and Land Reforms Act. Section 121 (1) of that Act makes it obligatory on the Gaon Panchayat to establish a Committee for each circle within its jurisdiction for carrying out the duties relating to settling and management of land, and for such other functions as may be prescribed e.g. see Rule 115 under the U. P. Zamindari Abolition and Land Reforms Act.

(3) "Consolidation Officer" means an officer appointed by the State Government under Section 42 to perform the duties of a Consolidation Officer under this Act;

[(3-A) "Consolidator" means an Officer appointed by the State Government under Section 42 to perform the duties of a Consolidator under this Act.]

(4) "Director of Consolidation" means an officer appointed by the State Government under Section 42, to perform the duties of the Director of Consolidation under this Act.

[(5) "land" means land held or occupied for purposes connected with agriculture, horticulture, and animal husbandry (including pisciculture and poultry farming) and includes—

- (a) the site, being a part of the holding, of a house or other similar structure, belonging to the tenure-holder thereof;
- (b) land for the time being vested in a Gaon Samaj or local authority under the U. P. Zamindari Abolition and Land Reforms Act, 1950.]

Land—meaning.—The definition of land as given in U. P. Tenancy Act has been greatly modified. Under the new definition land means land held or occupied for purposes connected with agriculture, horticulture and animal husbandry (including pisciculture and poultry farming). It will also include the site of the building, included in the holding and the land vested in the Gaon Samaj or local authority under the U. P. Zamindari Abolition and Land Reforms Act, (See Section 194 of the U. P. Zamindari Abolition and Land Reforms Act.)

(6) "Legal representative" has the meaning assigned to it in the Code of Civil Procedure, 1908;

Legal Representative.—Has been defined by Section 2(11) of the Code of Civil Procedure and means "a person who in law represents the estate of a deceased person and includes any person who intermeddles with the estate of the deceased, and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued". This definition puts a legal representative under three categories, viz. (1) a person who in law represents the estate of a deceased person, (2) a person who intermeddles with the said estate, and (3) where the suit is in a representative character, the person on whom the estate devolves on the death of the party to the suit. In other words the term legal representative only denotes the class of persons on whom the status of representative is fastened by reason of the death of a person whose estate they are held to represent.⁵ An assignee,⁶ or a person getting by *escheat*⁷ would not be a legal representative. An intermeddler does not mean a trespasser claiming adversely to the estate of the deceased⁸ but has been used to mean what is known as an *executer de son tort*.⁹ The definition is wide enough to cover the case of a coparcener, who gets the property by survivorship on the death of a coparcener who sues or is sued in a representative character.¹⁰

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| <p>3. Inserted by S. 2 of U. P. Act XIII of 1955.</p> <p>4. Subs. by <i>ibid.</i></p> <p>5. <i>Bisheshar Dayal v. Bajrang Singh</i>, 1929 O 353.</p> <p>6. <i>Mihān Lal v. Maya Devi</i>, 1929 A 444; 1936 Pat. 123; 1925 C 487.</p> | <p>7. 8 M I A 500; 1914 O 208.</p> <p>8. <i>Kisan Lal Motilal v. Bhika Ganga ram</i>, 1949 N 171. <i>Halsbury</i>, Vol. 14 pages 147 to 151.</p> <p>10. <i>Gyan Dutt v. Sada Nandlal</i>, 1938 A 163; <i>Rajendra Prasad v. Ganga Bux Singh</i>, 1945 O 80.</p> |
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- (7) "prescribed" means prescribed by rules made under this Act ;
- (8) "publication in the village" or "publish in the village" with reference to any document means reading out on a date of which information shall be given to each member of the Land Management Committee and which shall be proclaimed by beat of drums in the village, the document at a meeting of the Land Management Committee and affixing it at a conspicuous place in the village ;

Rules—See Rule 4.

- (9) "Settlement Officer (Consolidation)" means an officer appointed by the State Government under Section 42 to perform the duties of a Settlement Officer (Consolidation) under this Act and includes any person authorised by the State Government to perform all or any of the functions of the Settlement Officer (Consolidation) under this Act ;
- (10) "State Government" means the Government of Uttar Pradesh ;
- (11) "tenure-holder" means a *bhumidhar* or *sirdar* of the land concerned and unless the context otherwise requires shall also include *adhibasi* or *asami* ;

Bhumidhar.—Section 130 of the U. P. Zamindari Abolition and Land Reforms Act defines Bhumidhar and is given below:—

"130. *Bhumidhar*.—Every person belonging to any of the following classes shall be called a *bhumidhar* and shall have all the rights and be subject to all the liabilities conferred or imposed upon *bhumidhars* by or under this Act; namely—

- (a) every person who as a consequence of the acquisition of estates becomes *bhumidhar* under Section 18,
- (b) every person who acquires the rights of a *bhumidhar* under or in accordance with the provisions of this Act."

Sirdar.—Section 131 of the U. P. Zamindari Abolition and Land Reforms Act defines a sirdar and is given below:—

"131. *Sirdar*.—Every person belonging to any of the following classes shall be called a *sirdar* and shall have all the rights and be subject to all the liabilities conferred or imposed upon *sirdars* by or under this Act; namely—

- (a) every person who, as a consequence of the acquisition of estates, becomes a *sirdar* under Section 19,
- (b) every person who is admitted as *sirdar* of vacant land under the provisions of this Act, and
- (c) every person who, in any other manner, acquires the rights of a *sirdar* under or in accordance with the provisions of this Act."

Adhibasi.—Section 20 of the U. P. Zamindari Abolition and Land Reforms Act defines Adhibasi and is given below:—

"[20. A tenant of *sir*, sub-tenant or an occupant to be an *adhibasi*.

[“every person who—

- (a) on the date immediately preceding the date of vesting was or has been deemed to be in accordance with the provisions of this Act”].
- (i) except as provided in [sub-clause (i) of clause (b)] a tenant of *sir* [other than a tenant referred to in clause (ix) of Section 19 or in whose favour hereditary rights accrue in accordance with the provisions of Section 19], or

(ii) except as provided in [sub-clause (i) of clause (b)].

a sub-tenant other than a sub-tenant referred to in proviso to sub-section (3) of Section 27 of the United Provinces Tenancy (Amendment) Act, 1947, or in sub-section (4) of Section 47 of the United Provinces Tenancy Act, 1939, of any land other than grove-land,

(b) was recorded as occupant—

(i) of any land (other than grove-land or land to which Section 16 applies for land referred to in the proviso to sub-section (3) of Section 27 of the U. P. Tenancy (Amendment) Act, 1947) in the *khasra* or *khatauni* of 1356 F. prepared under Section 28 and [3:] respectively of the U. P. Land Revenue Act, 1901, or who was on the date immediately preceding the date of vesting entitled to regain possession thereof under clause (c) of sub-section (1) of Section 27 of the United Provinces Tenancy (Amendment) Act, 1947, or

(ii) of any land to which Section 16 applies in the [*khasra* or *khatauni* of 1356 *Fasli* prepared under Sections 28 and 33 respectively of] the United Provinces Land Revenue Act, 1901, but who was not in possession in the year 1359 F. shall, unless he has become a *bhamidhar* of the land under sub-section (2) of Section 18 or an *asami* under clause (h) of Section 21, be called *adhivasi* of the land and shall subject to the provisions of this Act, be entitled to take or retain possession thereof.

Explanation I.—Where a person referred to in clause (b) was evicted from the land after June 30, 1918, he shall notwithstanding anything in any order or decree, be deemed to be a person entitled to regain possession of the land.

Explanation II.—Where any entry in the records referred to in clause (b) has been corrected before the date of vesting under or in accordance with the provisions of the U. P. Land Revenue Act, 1901, the entry so corrected shall for the purposes of the said clause, prevail.

Explanation III.—For the purposes of explanation II an entry shall be deemed to have been corrected before the date of vesting if an order or decree of a competent Court requiring any correction in records had been made before the said date and had become final even though the correction may not have been incorporated in the records.

Explanation IV.—For purposes of this section occupant as respect any land does not include a person who is entitled to the land or any share therein in the year 1356 *Fasli*.

Asami.—Section 133 of the U. P. Zamindari Abolition and Land Reforms Act defines an Asami and is given below:—

“133. *Asami.*—Every person belonging to any of the following classes shall be called an *asami* and shall have all the rights and be subject to all the liabilities conferred or imposed upon *asamis* by or under this Act namely—

- (a) every person who, as a consequence of the acquisition of estates, becomes an *asami* under Section 11, 13 or 21;
- (b) every person who, in accordance with the provisions of this Act, is admitted by a *bhamidhar* or *sirdar* as a lessee of land comprised in his holding;
- (c) every person who, on or after the date of vesting, is admitted by the *Gaon Sabha* or the person entitled as a lessee of land described in Section 132; and
- (d) every person who, in any other manner, acquires the rights of an *asami* under or in accordance with the provisions of this Act.”

(12) words and expressions—

- (a) not defined in this Act but defined in the U. P. Land Revenue Act, 1901, or

- (b) not defined in this Act or in the U. P. Land Revenue Act, 1901, but defined in the U. P. Zamindari Abolition and Land Reforms Act, 1950.

shall have the meaning assigned to them in the Act in which they are so defined.

CHAPTER II

REVISION AND CORRECTION OF MAPS AND RECORDS

4. Declaration regarding consolidation.—(1) With a view to consolidation, the State Government may declare that it has decided to make a scheme of consolidation for any district or other local area.

(2) Every such declaration shall be published in the official *Gazette* and in each village of the said district or local area.

Publication in Village.—See Section 3(8).

Rules.—See Rule 16.

5. Effect of declaration.—(1) Upon the publication of the declaration under Section 4, the district or the local area, as the case may be, shall be deemed to be under consolidation operations from the date of such publication until the publication of the notification under Section 52 in the official *Gazette* to the effect that the consolidation operations have been closed.

(2) Where a district or any other local area is under consolidation operations, the duty of preparing and maintaining the maps, the *khasra* and the annual register under Chapter III of the U. P. Land Revenue Act, 1901, shall stand transferred to the Settlement Officer (Consolidation) [* * * *] ¹¹

Consolidation operations—Effect.—When a declaration has been published as provided by Section 4, the district or the local area shall be deemed to be under consolidation operations from such date till a notification under Section 52 has been issued in the official *Gazette* that consolidation operations have closed. During this period of consolidation operations the duty of preparing and maintaining the maps, the *khasra* and the annual register under Chapter III shall stand transferred to the Settlement Officer (Consolidation). This provision is analogous to Chapter IV of the U. P. Land Revenue Act. The declaration made under Section 5 may be cancelled at any time by the State Government (Section 6) and from the date of the cancellation the area shall cease to be under consolidation operations, and shall become subject to the normal revenue administration of the district (See Rule 18).

6. Cancellation of declaration under Section 4.—(1) It shall be lawful for the State Government at any time to cancel the declaration made under Section 4 in respect of the whole or any part of the area specified therein.

(2) Where a declaration has been cancelled in respect of any area under sub-section (1), such area shall, with effect from the date of cancellation, cease to be under consolidation operations.

Rules.—See Rules 17 and 18.

7. Examination of Revenue records.—The Assistant Consolidation Officer shall before proceeding to prepare a provisional consolidation scheme examine and test the accuracy of the village map, *khasra* and the current annual registers [by making a *partial* in accordance with

11. Words after (consolidation) deleted by S. 3 of U. P. Act XXVI of 1954.

the procedure to be prescribed. He shall also prepare or cause to be prepared a statement showing]¹²—

- (a) the mistakes with their nature discovered in the map, *khasra* and *khatauni*;
- (b) the number and nature of disputes pertaining to land records under the U. P. Land Revenue Act, 1901.

Rules.—See Rules 19 to 23-A.

¹³[**8. Revision and correction of records.**]—(1) Upon examination of the land records as aforesaid, the Assistant Consolidation Officer shall submit a report, in the form and manner prescribed, to the Settlement Officer (Consolidation) regarding correctness of the existing maps and records and the necessity, if any, of revision of such maps and records.]

(2) Upon receipt of the report under sub-section (1) the Settlement Officer (Consolidation) shall, after such inquiry as he may consider necessary, either—

- (a) direct the Assistant Consolidation Officer to proceed with the correction of maps or records or
- (b) recommend to the State Government for revision of maps or records in accordance with the provisions of Chapter IV of the U. P. Land Revenue Act, 1901.

(3) Upon receipt of the directions under clause (a) of sub-section (2), the Assistant Consolidation Officer shall after such further *partial* as he may consider necessary correct the entries in the Annual Register in accordance with the [procedure to be prescribed].]¹⁴

(4) Any person aggrieved by the order of Assistant Consolidation Officer under sub-section (3) may, within [21]¹⁵ days of the order, appeal to the Consolidation Officer, whose decision shall, except as otherwise provided by or under this Act, be final.

Rules.—See Rules 19 to 23-A and 24.

Final—meaning.—In Section 5 (2) of the U. P. Agriculturists' Relief Act, the words used were: “The decision of the appellate court shall be final.” In interpreting these words it was held that the word “final” was to be taken as absolutely final and therefore it excluded a revision also.¹⁶

9. Publication of corrected records.—The Annual Register prepared under sub-section (3) of Section 8 shall be published in the village [* * * *].¹⁷

Rule.—See Rule 23-A.

Published in the village.—See Section 3 (8).

10. Declaration regarding revision of records.—Upon the receipt of the recommendation under sub-section (2) (b) of Section 8, [and examining the same]¹⁸, the State Government shall publish a notification in the official *Gazette* to that effect and thereupon a revised

12. Subs. for the words “by making a field to field *partial* of the entire village. He shall also prepare a statement showing” by S. 4 of U. P. Act No. XXVI of 1954.
13. Subs. by S. 5 of *ibid.*
14. Subs. by *ibid.*
15. Subs. for “30” by *ibid.*
16. *Sardar Nihal Singh v. Ganesh Das Ram Gopal*, 1936 O W N 1158=

- 1937 O 124; *Thakur Mahipal Singh v. Kamta Prasad*, 1939 O W N 970. But see *Shah Chaturbhuj v. Shah Mauji Ram*, 1938 A W R 437 (H. C.)
17. The words after the word village deleted by S. 6 of U. P. Act XXVI of 1954.
18. Inserted by S. 7 of *ibid.*

map and *khasra* and the record-of-rights shall be prepared for the village or villages concerned in accordance with the provisions of Chapter IV of the U. P. Land Revenue Act, 1901, as if a notification had been issued under Section 48 of the said Act, in respect thereof.

¹⁹[**10-A. Partition of holdings.**—(1) Subject to such restrictions as may be prescribed, a tenure-holder entitled to any holding jointly with one or more other tenure-holders may, at any time after the publication of the notification under Section 4, but before publication of the Annual Register under Section 9 of the notification under Section 10, as the case may be, apply to the Consolidation Officer, that his share in the holding be separately allotted to him.

(2) Whenever an application is made by any tenure-holder under sub-section (1), the Consolidation Officer shall, notwithstanding anything in Section 178 of the U. P. Zamindari Abolition and Land Reforms Act, 1950, treat the tenure-holder to be separately entitled to a portion of the holding proportionate to his share therein and proceed accordingly.]

Tenure-holder.—See Section 3 (1).

Rules.—See Rule 32.

¹⁹[**10-B. Amalgamation of holdings.**—It shall be lawful for any tenure-holder entitled to a holding to have the holding amalgamated with the holding of any other tenure-holder on such terms as may be agreed upon between them, and the Consolidation Officer shall, ²⁰[in so far as it may be practicable, having regard to the general scheme of consolidation give effect to it].

Rules.—See Rule 32.

11. Preparation of statement of plots and tenure-holders.—(1) The Assistant Consolidation Officer shall, as soon as may be after the publication of registers under Section 9 or preparation of records under Section 10, prepare [or cause to be prepared].²¹

(a) a list of all plots comprised in the holding of each tenure-holder, showing—

(i) the area of each plot;

(ii) the soil classes of the plots determined in the manner prescribed in consultation with the Land Management Committee;

(iii) the hereditary rent rates sanctioned for the soil classes at the last settlement, roster or revision operations, whichever is the latest;

(iv) the rental value of each plot;

(v) ²²[wherever necessary] the revenue or the rent, as the case may be, of each plot, calculated in the manner prescribed;

(vi) such other particulars as may be prescribed.

(b) a list of each tenure-holder, showing—

(i) the total area held by the tenure-holder in all classes of tenures;

19. Added by S. 8 of *ibid.*

20. Subs. for the words "in so far as it may not be inconsistent with the provisions of this Act, given effect to it" by S. 3 of U. P. Act

XIII of 1955.

21. Added by S. 9 of U. P. Act XXVI of 1954.

22. Inserted by *ibid.*

- (ii) the revenue or the rent, as the case may be, for his share;
- (iii) the rental value of the area held by the tenure-holder; and
- (iv) such other particulars as may be prescribed.

(2) The statement shall be published in the village.

Rules.—See Rules 25 to 31, 33, 35, 36 and 38.

12. Objection on the statement—(1) Any person may within 3 days of the publication of the statement prepared under Section 11 file before the Assistant Consolidation Officer an objection disputing the correctness or nature of an entry in the statement or pointing out any omission therefrom.

(2) The Assistant Consolidation Officer shall, after hearing the parties, if necessary, on the objections filed under sub-section (1) together with the views of the Land Management Committee submit his report on those objections to the Consolidation Officer who shall, except as provided in sub-section (4), dispose of the objections in the manner prescribed.

(3) The decision of the Consolidation Officer shall, except as otherwise provided by or under this Act, be final.

(4) Where the objection filed under sub-section (1) involves a question of title and such question has not already been determined by a competent Court, the Consolidation Officer shall refer the question for determination [to the Civil Judge having jurisdiction who shall thereupon refer it]²³ to the Arbitrator.

²⁴[(5) Upon the making of reference under sub-section (4) all suits or proceedings in the Court of first instance, appeal, reference or revision, in which the question of title in relation to the same land has been raised, shall be stayed.]

(6) The decision of the Arbitrator under sub-section (4) shall be final.

Rules.—See Rules 34 and 63.

Final—meaning.—See commentary under Section 8. The decision of the Consolidation Officer shall be final i. e., it would not be open to appeal or revision, except as provided by or under the Act. Rule 34 (2) provides an appeal against the order of the Consolidation Officer which may be filed before the Settlement Officer (Consolidation), within 15 days of the order. The decision in appeal shall be final.

Arbitrator.—Questions of title not already determined by a competent Court, shall be referred by the Consolidation Officer to the Civil Judge having jurisdiction who shall thereupon refer it to the Arbitrator, appointed under Section 37. The matter shall be determined in accordance with the provisions of Arbitration Act, 1940. The decision of the Arbitrator shall be final. This, however, does not mean that no objections can be filed against the award under the provisions of the Arbitration Act, and the Court must accept it even if it is illegal and invalid.

CHAPTER III PREPARATION OF CONSOLIDATION SCHEME

13. Consolidation Scheme.—The Consolidation Scheme shall consist of—

(a) the Statement of Principles referred to in Section 14,

23. Inserted by S. 10 of U. P. Act | 24. Subs. by *ibid.*
XXVI of 1954.

- (b) the Statement of Proposals referred to in Section 19, and
- (c) such other statements as may be prescribed.

Rules—See Rule 37

14. Statement of Principles.—(1) The Assistant Consolidation Officer shall prepare in respect of each village under consolidation operations, a statement (hereinafter called the Statement of Principles) setting forth in writing the principles to be followed in framing the consolidation scheme. The statement shall also show in broad outlines the proposed re-survey and layout of the village including—

- (a) the existing and the proposed means of communications ;
- (b) the area proposed to be planted with trees or to be set apart for pasture, fisheries, manure pits, khaliyans, cremation grounds and graveyards ;
- (c) the area to be set apart for abadi ;
- (d) the location of works of public utility and other common use ;
- (e) provision for public conservancy ; [***]²⁵.
- [ee] the basis on which the tenure-holders will contribute towards land required for purposes of common utility and the extent to which vacant land may be utilised with a view to the said purpose ; and²⁶
- (f) any other matter which may be prescribed.

(2) The Assistant Consolidation Officer shall prepare the statement in consultation with the Land Management Committee in the manner prescribed.

(3) If there is a difference of opinion between the Assistant Consolidation Officer and the Land Management Committee in regard to any matter, it shall be referred to the Settlement Officer (Consolidation) whose decision shall be final.

Rules—See Rules 39 and 41.

27[15. Principles to be followed in the preparation of the Statement of Principles.]—(1) The Assistant Consolidation Officer shall, in preparing the Statement of Principles under Section 14, have regard to the following principles—

- (a) the land in each village is to be divided and grouped in district blocks, which will not exceed three in numbers except with the permission of the Director of Consolidation and will be demarcated after taking into account the following factors—
 - (i) the kind and number of crops grown in the village ;
 - (ii) the quality of soil ;
 - (iii) the existence or absence of irrigation facilities ; and
 - (iv) the presence of land subject to fluvial action of any river ;
- (b) as far as possible only those tenure-holders shall get land in any particular block who already hold land therein ;

25. The word “and” deleted by S. 11 of U. P. Act XXVI of 1954.

26. Added by *ibid.*

27. Subs. by S. 12 of U. P. Act XXVI of 1954.

- (c) the number, or *chaks* to be allotted to each tenure-holder excluding areas earmarked for *abadi* and those reserved for public purposes shall not exceed the number of blocks in the village;
- (d) the tenure-holder belonging to the same family shall, as far as possible, be given neighbouring *chak*;
- (e) the location of the residential house of the tenure-holder or improvement, if any, made by him shall, as far as possible, be taken into account in allotting *chaks*;
- (f) small tenure-holder shall, so far as possible, be given land near the village *abadi*;
- (g) an existing compact holding or farm which is $6\frac{1}{4}$ acres or more in area shall not, as far as possible, be distributed or divided;
- (h) every tenure-holder is, as far as possible, allotted land in the block where he holds the largest part of the holding;
- (i) the allotment of plots under clause (h) shall be made on the basis of rental value thereof:

Provided that the area of the plots proposed to be allotted shall not differ in any case, except with the permission of the Assistant Director of Consolidation, by more than 20 per cent. from the area of the original plots.

(2) The Assistant Consolidation Officer shall also have regard to such other principles as may be prescribed or specified by the Consolidation Committee and are not inconsistent with the provisions of this Act and the Rules.]

Rules—See Rules 40, 42 and 43.

16. Publication and Objection on the Statement of Principles.—

(1) The Statement of Principles prepared under Section 14 shall be published in the village and a copy sent to the Consolidation Officer.

(2) Any person likely to be affected by the scheme may, within 15 days of such publication, make an objection in the manner prescribed.

17. Disposal of Objections on the Statement of Principles.—(1)

The Assistant Consolidation Officer shall, after hearing the parties, if necessary, on the objections filed under Section 16 and taking into account the views of the [Consolidation Committee]²⁸, submit his report on those objections to the Consolidation Officer, who shall dispose of the objections in the manner prescribed.

(2) Any person aggrieved by the order of the Consolidation Officer under sub-section (1) may, within 15 days of the date of the order, file an appeal before the Settlement Officer (Consolidation) whose decision, except as otherwise provided by or under this Act, shall be final.

(3) The Consolidation Officer and the Settlement Officer (Consolidation) [may]²⁹ before deciding the objection or the appeal as the case may be, make a local inspection of the village after giving due notice

28. Subs. by S. 22 of U. P. Act XXVI of 1954.

29. Subs. for the word "shall" by S. 13 of *ibid.*

of their intention to do so to the parties concerned and the [Consolidation Committee.]²⁶

18. Confirmation of the Statement of Principles.—Where no objections are filed on the Statement of Principles within the time specified in Section 16 or where such objections are filed and have been finally disposed of, the Settlement Officer (Consolidation) shall, after such modification or alteration as may be necessary in view of the order, if any, passed under Section 17, confirm the statement and thereupon the statement as confirmed shall become final and be published in the village.

19. Statement of Proposals.—(1) As soon as the statement has been confirmed under Section 18, the Assistant Consolidation Officer shall, in accordance with the statement, prepare a Statement of Proposals in the prescribed form showing—

- (a) the particulars specified in clause (b) of sub-section (1) of Section 11 in respect of each tenure-holder;
- (b) the *khasra* number of the plots proposed to be allotted to each tenure-holder in lieu of the original plots of his holding, the nature of rights therein, the rental value and soil classification of the fields so allotted;
- (c) briefly the reasons in support of the proposal in clause (b);
- (d) the compensation for trees, wells, buildings or any other improvement calculated in the manner prescribed;
- (e) the areas earmarked for public purposes and the layout of such areas and the rental value thereof;
- (f) the revenue or rent of the allotted plot payable by the tenure-holder; and
- (g) such other particulars as may be prescribed.

(2) The Statement of Proposals shall be accompanied by a village map showing the proposed arrangement of plots.

(3) Whenever in preparing a Statement of Proposals it appears to the Assistant Consolidation Officer that it is necessary to amalgamate any land used for public or common purposes with any holding in the scheme, he shall make a declaration to that effect stating in such declaration that it is proposed that the rights of the public as well as of all individuals in or over the said land shall be transferred to any other land earmarked for public purposes in the statement and whenever the rights are so transferred they shall stand extinguished in the land from which they are transferred.

(4) The Statement of Proposals shall be prepared in consultation with the [Consolidation Committee]²⁷ in the manner prescribed.

(5) If there is difference of opinion between the Assistant Consolidation Officer and the [Consolidation Committee]²⁸ in regard to any matter contained in the Statement of Proposals it shall be referred to the Settlement Officer (Consolidation) whose decision shall be final.

Rule—See Rule 44 to 48.

20. Objections on the Statements.—(1) The Statement of Proposals prepared under Section 19 shall be published in the village.

30. Subs. by S. 22 of U. P. Act XXVI of 1954.

(2) Any person likely to be affected by the proposals may, within 15 days of such publication, file an objection in writing before the Assistant Consolidation Officer.

(3) Any member of the public affected or any person having any interest or right, in addition to the right of public highway, in or over any public land or having any other interest or right which is substantially prejudiced by the proposals under clause (e) of sub-section (1) and sub-section (2) of Section 19 may, within 15 days after the publication of the declaration under sub-section (1) file an objection before the Assistant Consolidation Officer stating the nature of such interest or right and the manner in which it is prejudicial and the amount and the particulars of his claim to compensation therefor:

Provided that no claim for compensation on account of the transfer or diminution of the right or public highway over such land shall be entertained.

Scope.—This section provides for objections to be filed against the Statement of Proposals prepared under Section 19. Any person "likely to be affected" by the proposals may file objections. Objections against proposals about the areas earmarked for public purposes may be filed by (1) a member of the public or (2) any person having any interest or right in addition to the right of public highway, which is substantially prejudiced by the proposal.

Right—meaning.—It is a generic and common word embracing whatever may be lawfully claimed—an enforceable claim or title to any subject-matter whatever³¹. The right may be accessory, contingent, prescriptive, proprietary or under-proprietary. In civil society it means that which a man is entitled to have or to do and to receive from others within the limits prescribed by law.

Interest—meaning.—Interest means legal concern, right or pecuniary stake; the legal concern of a person in the thing or property or in the right to some of the benefits or use from which the property is inseparable; such a right in or to a thing capable of being possessed or enjoyed as property which can be enforced by judicial proceedings. The interest may be beneficial, contingent, protected or vested. In its dictionary meaning it is of wide amplitude and might in a general sense be treated as including even the right of a charge holder to enforce the charge against the property forming the subject-matter of the charge³². The word interest has been used in Section 91 of the Transfer of Property Act, where its meaning has not been confined to the right of ownership alone but extended to any interest in the property, however small it may be³³. It may accrue by succession, conveyance, or contract, but it must be a present interest and not a mere contingent or future interest³⁴.

Rules.—See Rule 63.

21. Disposal of objection on the Statement.—(1) The Assistant Consolidation Officer shall, after hearing the parties, if necessary, on the objections filed under Section 20 submit his report on those objections to the Consolidation Officer who shall, except as provided in Section 22, dispose of the objections in the manner prescribed.

(2) Any person aggrieved by the order of the Consolidation Officer under sub-section (1) may, within 15 days of the date of the order, file an appeal before the Settlement Officer (Consolidation) whose decision shall, except as otherwise provided by or under this Act, be final.

(3) The Consolidation Officer and the Settlement Officer (Consolidation) shall, before deciding the objection, or the appeal, as the case may be, make a local inspection of the village after giving due notice

31. *Basorey v. Ballabhdas*, 8 I.C. 1146.

32. *Sharif Ahmad v. Hinler*, 1937 O.

35 (F. B.)

33. *Paya Metahil Appu v. Kovamel*

34. *Amina*, 19 M. 151.

34. *Ram Singh v. Baldeo Prasad*, 1927

A. 643 (647).

of their intention to do so to the parties concerned and the [Consolidation Committee]³⁵.

Rules.—See Rule 49.

22. Objection relating to title in land.—(1) Where any objection filed under Section 20 involves a question of title in or over land and such question has not already been finally determined by a competent Court, the Consolidation Officer shall refer it for determination [to the Civil Judge having jurisdiction who shall thereupon refer it] to the Arbitrator.

[2] (2) Upon the making of reference under sub-section (1) all suits or proceedings in the court of first instance, appeal, reference or revision, in which the question of title in relation to the same land has been raised, shall be stayed.]

(3) The decision of the Arbitrator shall be final.

Arbitrator.—See commentary under Section 12.

23. Confirmation of the Statement of Proposal.—Where no objections are filed on the statement of proposals within the time specified in Section 20 or where such objections are filed and have been disposed of under Section 21 or 22 the Settlement Officer (Consolidation) shall, after such modification or alteration as may be necessary in view of the orders passed under Section 21 or 22, confirm the statement and thereupon the statement as confirmed shall become final and be published in the village.

Rules.—See Rule 50.

CHAPTER IV ENFORCEMENT OF THE SCHEME

24. Date of coming into force of the scheme.—The Consolidation Scheme shall come into force on such date as may be specified by the Consolidation Officer.

Rules.—See Rule 51.

25. Allotment of new holdings.—After the final consolidation scheme has come into force the Assistant Consolidation Officer shall in the prescribed manner and form issue allotment order showing the new field allotted to each tenure-holder in accordance with the said scheme.

Rules.—See Rules 52, 53 and 54.

26. Date of entering into possession.—The tenure-holders shall be entitled to enter into possession of the fields allotted to them on or after [a date to be fixed by the Director of Consolidation subsequent to] ³⁶, the date of confirmation of the consolidation scheme :

Provided that the Consolidation Officer may if all the tenure-holders so agree allow them to enter into possession forthwith or from such date as may be specified by him.

38-a[27. New revenue records.—(1) As soon as may be, after

- 35. Subs. by S. 22 of U. P. Act XXVI of 1954.
- 36. Inserted by S. 14 of U. P. Act XXVI of 1954.
- 37. Subs. by *ibid.*

- 38. Subs. for the words "the first day of May, next following" by S. 15 of U. P. Act XXVI of 1954.
Subs. by U. P. Ordinance No. VIII of 1955, pub. in U. P. Gaz. Extra, dated 10/8/55,

the consolidation scheme has come into force, the Director of Consolidation shall cause to be prepared a new village map, *khasra* and record-of-rights in respect of each village included in the consolidation operation and the provisions of the U. P. Land Revenue Act 1901 shall, subject to such modifications and alterations as may be prescribed, be followed in the preparation of the said records.

(2) All entries in the record-of-rights prepared under sub-section (1) shall be final and conclusive.

(3) The record prepared under sub-section (1) shall be maintained by the Collector instead of the records maintained previously under Section 33 of the U. P. Land Revenue Act, 1901.]

³⁹[**28. Delivery of possession.**—The Assistant Consolidation Officer shall, if necessary, put the person or persons including the Land Management Committee to whom *chaks* or lands have been allotted in actual physical possession of the holding or lands allotted to them and for so doing shall have all the powers including powers as regards contempt, resistance and the like as are exercisable by a Civil Court in execution of a decree for delivering possession of immovable property :

Provided that the delivery of possession as aforesaid shall not affect the right of the person from whom possession is transferred, to lend and gather the crops standing on such chaks or lands at the date of the delivery, unless the Assistant Consolidation Officer decides for reasons to be recorded that the possession over the crop also shall be delivered :

Provided further that in cases where a person is entitled to land and gather the standing crop in accordance with the preceding proviso, he shall be liable to pay such compensation for the use of the land to the person who has been allotted the land as may be prescribed having regard to the nature of the crop.]

Rules.—See Rule 55.

Delivery of possession—As Rule 55 provides the procedure in affecting change of possession shall be the same as provided in the Civil Procedure Code for delivery of possession of immovable property in execution of decree, i. e., Order 21 Rules 35, 36 and 97 to 103.

⁴⁰[**29. Compensation.**—(1) Where possession over standing crops also is delivered under Section 28, the Assistant Consolidation Officer shall determine in the manner prescribed the compensation payable in respect of such crops by the tenure-holder put in possession. Such tenure-holder shall within nine months of the date of possession pay such compensation to the person or persons from whom possession was transferred and in case of default such compensation shall be recoverable from him as an arrear of land revenue].

(2) When a tenure-holder from whom compensation is recoverable under the scheme otherwise than under sub-section (1), fails within three months of the date on which he enters into possession under Section 28, to deposit such compensation in the prescribed manner, it shall be recoverable from him as an arrear of land revenue and shall be disbursed in the manner prescribed.

39. Subs. by S. 4 of U. P. Act XIII of 1955.

40. Subs. by S. 5 of U. P. Act XIII of 1955.

(3) Without prejudice to the provisions of sub-section (1) or (2), where any compensation payable under this Act is not paid whether in whole or in part on or before the due date, interest at the rate of 1 per cent. per month shall be charged on the amount not so paid.

Rules.—Rules 56 and 57.

Objection.—Sections 34 to 36.

30. Rights after consolidation.—With effect from the date on which a tenure-holder, in pursuance of the provisions of Section 26, enters into possession of the plots allotted to him his rights, title, interest and liabilities in his original holding shall be extinguished and he shall have the same rights, title, interest and liabilities subject to modification, if any, specified in the final consolidation scheme in the plots allotted to him under Section 25.

Scope.—The definition of tenure-holder includes within its meaning a *bhumidhar*, a *sirdar*, an *adivasi* and an *asami*. In the consolidation scheme a *bhumidhar* may be allotted plots in which the original tenure-holder had rights of a *sirdar* only. The *bhumidhar* getting these plots shall be deemed to be a *bhumidhar* of these plots and not a *sirdar*. He shall have the same rights, title, interest and liabilities, subject to modification, if any, that he possessed in his original holding. Similarly, a *sirdar*, an *adivasi*, or an *asami* getting plots, which originally formed part of the holding of a *bhumidhar*, shall get only the rights that he originally possessed and not the rights of a *bhumidhar*.

31. Encumbrances.—(1) If a holding brought under the scheme of consolidation is burdened with any lease, mortgage or other encumbrance, such lease, mortgage or other encumbrance shall be transferred and attached to the corresponding holding under the scheme or to such part of it as the Assistant Consolidation Officer may have determined in preparing the scheme and thereupon the lessee, mortgagee or other encumbrancer, as the case may be, shall cease to have any right in or against the land from which the lease or other encumbrance has been transferred.

Explanation.—“Lessee” shall include an *asami* or *adivasi*.

(2) The Assistant Consolidation Officer shall, if necessary, put any lessee, mortgagee or other encumbrancer entitled to possession, in possession of the holding or part of the holding to which his lease or other encumbrance has been transferred under sub-section (1).

Objections.—See Sections 34 to 36.

32. Right to transfer holding.—Notwithstanding anything contained in the U. P. Land Revenue Act, 1901, and the U. P. Zamin-dari Abolition and Land Reforms Act, 1950, the rights, title and interest of tenure-holders in their holdings and any encumbrances therein shall, for the purpose of giving effect to any scheme of consolidation affecting them, be transferable by exchange or otherwise and a tenure-holder or any other person shall not be entitled to object or interfere with any transfer made for the said purpose.

33. Costs.—(1) The Assistant Consolidation Officer shall, in the manner prescribed, determine the estimated and final cost of consolidation and distribute such costs between the persons affected by the order of consolidation.

(2) One-half of the estimated costs determined under sub-section (1) shall be recoverable in advance in the manner prescribed and shall be adjusted against the final costs recoverable under the said sub-section.

(3) Any amount payable as costs under this section shall be recoverable as an arrear of land revenue.

Rules.—See Rules 58 to 62.

Objections.—See Sections 34 to 36.

34. Objection on enforcement—(1) Any person aggrieved by any order passed by the Assistant Consolidation Officer under Sections 29, 31 and 33 may within 15 days of the date of such order, file an objection before the Assistant Consolidation Officer.

(2) The Assistant Consolidation Officer shall submit the objection along with his report to the Consolidation Officer.

Rules.— See Rule 63.

35. Disposal of objections.—(1) Upon the receipt of the objection and the report under Section 34, the Consolidation Officer shall, except as provided in Section 36, dispose of the objection in the manner prescribed and after notice to the objector.

(2) Any person aggrieved by the order of Consolidation Officer under sub-section (1) may, within 30 days of the order, appeal to the Settlement Officer (Consolidation) whose decision shall, except as otherwise provided by or under this Act, be final.

36. Reference to Arbitration.—(1) Where the objection filed under Section 34 involves a question of title in land and such question has not already been finally determined by a competent Court, the Consolidation Officer shall refer it for determination ⁴¹[to the Civil Judge having jurisdiction who shall thereupon refer it] to the Arbitrator.

⁴²(2) Upon making of a reference under sub-section (1) all suit and proceedings in the Court of first instance, appeal, reference or revision, in which the question of title in relation to the same land has been raised, shall be stayed.]

(3) The decision of the Arbitrator shall be final.

Arbitrator :—See Commentary under Section 12.

CHAPTER V

MISCELLANEOUS

37. Arbitration.—(1) Where any matter is, by or under this Act, directed to be referred to an Arbitrator for determination, the Arbitrator shall be appointed by the State Government from amongst Civil Judicial Officers or Assistant Collectors of the I class of not less than five years' standing and in all other respect the matter shall be determined in accordance with the provisions of the Arbitration Act, 1940.

(2) The appointment of an Arbitrator under sub-section (1) may be made either generally or in respect of any particular case or class of cases or in respect of any specified area or areas.

38. Powers to enforce attendance of witnesses and in certain matters.—(1) The Settlement Officer (Consolidation), Consolidation Officer and Assistant Consolidation Officer shall have all such powers and rights and privileges as are vested in a Civil Court on the occasion of any action, in respect of the following matters —

41. Inserted by S. 16 of U. P. Act XXVI of 1954.

42. Subs. by *ibid.*

- (a) the enforcing of the attendance of witnesses and examining them on oath, affirmation or otherwise and the issue of a commission or request to examine witnesses abroad ;
- (b) compelling any one for the production of any documents ;
- (c) the punishing of persons guilty of contempt ;

and a summon signed by such officer may be substituted for and shall be equivalent to any formal process capable of being issued in any action by a Civil Court for enforcing the attendance of witnesses and compelling the production of document.

(2) Notwithstanding anything contained in any law for the time being in force, if the Settlement Officer (Consolidation), or the Consolidation Officer is satisfied that a clerical or arithmetical mistake or error apparent on the face of the record exists in any document prepared under any provisions of this Act he shall, either on his own motion or on the application of any person interested, correct the same.

39. Power for production of documents etc.—(1) Subject to any conditions or restrictions that may be prescribed, the Settlement Officer (Consolidation), Consolidation Officer or Assistant Consolidation Officer may, by written order, require any person to produce such documents, papers and registers or to furnish such information as he may deem necessary for the proper exercise of his powers or the proper discharge of his duties under this Act.

(2) Every person required to produce any document, paper or register or to furnish an information under this section shall be deemed legally bound to do so within the meaning of Sections 175 and 176 of the Indian Penal Code.

40. Proceedings before Settlement Officer (Consolidation), Consolidation Officer and Assistant Consolidation Officer to be judicial proceedings.—A proceeding before a Settlement Officer (Consolidation), Consolidation Officer and Assistant Consolidation Officer shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228 and for the purposes of Section 196 of the Indian Penal Code.

41. Application of U. P. Land Revenue Act, 1901.—Unless otherwise expressly provided by or under this Act, the provisions of Chapters IX and X of the U. P. Land Revenue Act, 1901, shall apply to all proceedings including appeal and applications under this Act.

42. Officers and authorities.—(1) The State Government may for the purpose of this Act appoint—

- [(a-i) Consolidator] ;⁴³
- (i) Assistant Consolidation Officer ;
 - (ii) Consolidation Officer ;
 - (iii) Settlement Officer (Consolidation) ;
 - (iv) Assistant Director (Consolidation) ; and
 - (v) Director of Consolidation.

(2) The Director of Consolidation and Assistant Director of Consolidation shall perform such duties and exercise such powers of supervision and superintendence over the work of the Settlement Officer (Consolidation), [Consolidation Officer, Assistant Consolidation Officer and Consolidator]⁴⁴ as may be prescribed.

(3) The Settlement Officer (Consolidation), the [Consolidation Officer, the Assistant Consolidation Officer and Consolidator]⁴⁴ shall exercise the powers and perform the duties conferred or imposed upon them by or under this Act or the rules framed thereunder.

⁴⁵[(4) The State Government may, by notification in the official *Gazette*, empower the Assistant Director of Consolidation to discharge all or such of the functions of the Director of Consolidation as may be specified in the notification and thereupon all references to the Director of Consolidation in this Act shall in respect of the functions so specified will be deemed to include reference to the Assistant Director of Consolidation also.]

43. Land Management Committee.—(1) Where the Land Management Committee constituted under Section 121 of the U. P. Zamindari Abolition and Land Reforms Act, 1950, consists of more than 5 members, it shall elect from amongst its members [a sub-committee consisting of]⁴⁶ five or such larger number not exceeding 11, as may be fixed by the Director of Consolidation, possessing such qualifications as may be prescribed who shall, together with the members, if any, nominated under sub-section (2), be deemed to be the [Consolidation Committee]⁴⁷ for purposes of this Act.

⁴⁸[(1-A) In respect of any area to which sub-section (2) of Section 117-A of the U. P. Zamindari Abolition and Land Reforms Act, 1950, is applicable the Consolidation Committee shall consist of such number of members not being less than five or more than eleven, as may be prescribed, to be nominated by the Collector after consultation with the Chairman of the local authority concerned from amongst the residents of the area concerned and possessed of such qualifications as may be prescribed.]

(2) The Settlement Officer (Consolidation) may nominate 1 to 4 persons on [Consolidation Committee]⁴⁷ whose addition will in his opinion facilitate consolidation proceedings in the circle. The persons so nominated shall, for purposes of this Act, have all the powers and be subject to all the liabilities of members of the Committee.

⁴⁹[(3) Where at any time the State Government is satisfied that the Consolidation Committee has refused or failed without reasonable cause or excuse to discharge the duties or perform the functions imposed or assigned by or under this Act or circumstances have so arisen that the Committee has been rendered unable to discharge the duties or perform the functions aforesaid or it is otherwise expedient or necessary to do so, it may by notification in the official *Gazette* either re-constitute for purposes of this Act the Consolidation Committee in accordance

44. Subs. for the words "Consolidation Officer and Assistant Consolidation Officer" by S. 6 of U. P. Act No. XIII of 1955.

45. Added by S. 17 of U. P. Act XXVI of 1954.

46. Inserted by S. 18 of U. P. Act

XXVI of 1954.

47. Subs. by *ibid*,

48. Added by S. 7 of U. P. Act XIII of 1955.

49. Added by S. 18 of U. P. Act XXVI of 1954.

with the provisions of sub-sections (1) and (2) or appoint some other authority to perform the functions or discharge duties of the Consolidation Committee under this Act and thereupon all references to the Consolidation Committee under this Act shall be deemed to include references to the Consolidation Committee so re-constituted or the authority so appointed, as the case may be.]

44. Delegation.—The State Government may, by notification in the official *Gazette*, delegate to any officer or authority any of the powers conferred upon it by this Act, to be exercised subject to such restrictions and conditions as may be specified in the notification.

45. Powers of Officers to enter upon land for purposes of survey and demarcation.—The officers mentioned in sub-section (1) of Section 42 or any person acting under the orders of any one of them may, in the discharge of any duty under this Act enter upon and survey land and erect survey marks thereon and demarcate the boundaries thereof and do all other acts necessary for the proper performance of that duty.

46. Penalty for destruction, injury or removal of survey marks.—(1) If any person destroys wilfully or injures or removes without lawful authority a survey mark lawfully erected, he may be ordered by a Consolidation Officer to pay such compensation not exceeding fifty rupees for each mark so destroyed, injured or removed, as may in the opinion of that Officer be necessary to defray the expenses of restoring the same and of rewarding the person, if any, who gave information of the destruction, injury or removal.

(2) The orders for the payment of compensation under sub-section (1) shall not bar a prosecution under Section 434 of the Indian Penal Code.

47. Appeals etc. to be allowed by Act.—No appeal and no application for revision shall lie from any order passed under the provisions of this Act except as provided by or under this Act.

Analogous Law.—See Section 263 of the U. P. Tenancy Act.

Scope.—This section regulates appeals and revisions. Unless an appeal or revision is provided under the Act, it shall not be maintainable.

48. Power of Director of Consolidation to call for records and to revise orders.—The Director of Consolidation may call for the record of any case if the Officer (other than the Arbitrator) by whom the case was decided appears to have exercised a jurisdiction not vested in him by law or to have failed to exercise jurisdiction so vested, or to have acted in the exercise of his jurisdiction illegally or with substantial irregularity and may pass such orders in the case as it thinks fit.

Analogous Law.—See Section 333 of the U. P. Zamindari Abolition and Land Reforms Act.

⁵⁰[48-A. Special provisions with respect to evacuee property.]—(1) Notwithstanding anything contained in the foregoing provisions of this Act—

(a) no decision of the Custodian of Evacuee Property (hereinafter in this section referred to as the Custodian) in

relation to title to any land vested in him as evacuee property under the provisions of the Administration of Evacuee Property Act, 1950, shall be called in question and varied or reversed by any officer or authority under this Act ; and

(b) nothing in this Act shall be construed as requiring the Custodian to stay any proceedings in relation to title to any such land pending before him on the date of the coming into force of those provisions of this Act under which proceedings in relation to title to land are required to be stayed or as empowering the Consolidation Officer or any other officer or authority to refer for determination of any question of title in relation to such land involved in any proceedings pending before the Custodian on such date.

(2) Where as a result of consolidation operations in any village—

(a) lands which are vested as evacuee property in the Custodian under the provisions of the Administration of Evacuee Property Act 1950, are included in holdings which are not vested in the Custodian as evacuee property, such lands shall, on and from the date of the coming into force of the consolidation scheme, cease to be so vested in the Custodian, and the provisions of the said Act shall thereupon cease to apply in relation thereto ; and

(b) in lieu of such lands, corresponding lands shall be included in holdings which are vested in the Custodian as evacuee property, and such lands shall, on and from the date of the coming into force of the consolidation scheme, be deemed to be evacuee property declared as such within the meaning of the aforesaid Act and be vested in the Custodian and the provisions of the said Act shall thereupon apply, so far as may be, in relation to such lands.]

Scope.—This section has been specially enacted for the purposes of evacuee property.

49. Bar to Civil Court Jurisdiction.—No person shall institute any suit or other proceeding in any [Civil or Revenue Court]⁵¹ with respect to any matter arising out of consolidation proceedings or with respect to any other matter in regard to which a suit or application could be filed under the provisions of this Act.

50. Exemption from court-fees.—No court-fee shall be payable on any application made in any proceedings under the provisions of this Act.

51. No instrument necessary to effect transfer.—Notwithstanding anything contained in any law for the time being in force—

(a) no instrument in writing shall be necessary in order to give effect to a transfer involved in carrying out any scheme of consolidation of holdings, and

(b) no instrument, if executed, shall require registration.

51. Subs. for the words "Civil Court" by S. 8 of U. P. Act XIII of 1955,

52. Close of Consolidation operation.—As soon as may be after the tenure-holders have entered into possession of their new holding in pursuance of Section 26, the State Government shall issue a notification in the official *Gazette* that the Consolidation operations have been closed in the village and the village shall then cease to be under consolidation operation.

53. [Deleted by Section 20 of U. P. Act XXVI of 1954.]

54. Rules.—(1) The State Government may make rules for the purposes of carrying into effect the provisions of this Act.

(2) Without prejudice to the generality of foregoing power, such rules may provide for—

- (a) the form of the application and declaration under Section 4 ;
- (b) the matters pertaining to the cancellation of the declaration regarding consolidation under Section 6 and the consequences thereof;
- (c) the procedure and proceeding relating to the examination of the revenue records under Section 7 ;
- (d) the form of the statements referred to in Section 13 ;
- (e) the procedure and the manner relating to the preparation of the Statement of Principles and the Statement of Proposals ;
- (f) the matters relating to the preparation and demarcation of blocks referred to in Section 15 ;
- (g) the procedure and the manner in which the views of the [Consolidation Committee]⁵² shall be obtained on the matters specified for this purpose ;
- (h) the contents of the reports to be submitted by the Assistant Consolidation Officer to the Consolidation Officer and the procedure relating thereto ;
- (i) the procedure and the manner relating to the confirmation of Statement of Principles, Statement of Proposals and other statements by the Settlement Officer (Consolidation) ;
- (j) the determination of areas to be earmarked for public purposes ;
- (k) the matters relating to transfer of rights from the public land to other land earmarked for public purposes ;
- (l) the manner in which the date fixed for enforcement of the consolidation scheme shall be noted ;
- (m) the procedure and the manner relating to the issue of allotment orders under Section 25 :
- (n) the procedure for entering into possession ;
- (o) the principles and the manner for determination of compensation to be paid [to, or recovered from] ⁵³ under this Act to any tenure-holder ;
- (p) the circumstances under which the provisions of Section 30 may not apply in any particular case and the procedure

52. Subs. by S. 22 of U. P. Act XXVI of 1954.

53. Inserted by S. 9 of U. P. Act XIII of 1955.

in which and the extent to which modification of the said section in such cases shall be made;

(q) the determination and transfer of encumbrances from an existing holding to a new holding;

(r) ⁵⁴[appointment of Arbitrator];

⁵⁵[(n) the procedure for transmission of the question of title to the Civil Judge and of reference by the Civil Judge to Arbitrator under Sections 12, 22 and 36 and the return of the decision thereon by the Civil Judge to the Consolidation Officer;]

⁵⁶[(rr) the procedure relating to the disposal of references by the Arbitrator under sub-section (4) of Section 12, Section 22 and Section 36;]

(s) the disposal of suits and proceedings stayed under Sections 12, 22 and 36;

(t) election of members of the [Consolidation Committee]⁵⁷ under Section 43;

⁵⁸[(u) the term of members of the Consolidation Committee and vacation of seat by such members.]

(u) the matters relating to the mode of service of notice or document under this Act;

(v) imposing limits of time within which things to be done for the purposes of the rules must be done, with or without powers to any authority therein specified to extend limits imposed;

(w) the procedure to be followed in proceeding including applications, filing and disposal of objections and appeals under this Act, in cases for which no specific provision has been made therein;

(x) the duties of any officer, or authority having jurisdiction under this Act, the procedure to be followed by such officer and authority;

(y) the time within which applications and appeals may be presented under this Act, in cases for which no specific provision in that behalf has been made herein;

(z) the application of the provisions of the Indian Limitation Act, 1908, to applications, appeals and proceedings under this Act;

(aa) the delegation of powers conferred by this Act on the State Government or any other authority, officer or person; and

(bb) the transfer of proceedings from one authority or officer to another.

(3) Power to make rules given by this Act is subject to the condition of the rules being made after previous publication.

54. Subs. by S. 21 of U. P. Act XXVI of 1954,

55. Inserted by *ibid.*

56. Inserted by S. 9 of U. P. Act XIII of 1955.

57. Subs. by S. 22 of U. P. Act XXVI of 1954.

(4) All rules made under this Act shall be published in the official *Gazette*, and shall, unless some later date is appointed, come into force on the date of such publication.

(5) All rules made under this Act shall be laid for not less than fourteen days before the State Legislature as soon as they are made, and shall be subject to such modifications as the Legislature may make.

RULES UNDER THE UTTAR PRADESH CONSOLIDATION OF HOLDINGS ACT, 1953

(U. P. ACT V OF 1954)

(Published in U. P. *Gaz.* dated May 8, 1954 Part 1-A, p. 1061)

AS AMENDED-UPTO-DATE

[*Rules framed under S. 5 $\frac{1}{2}$ (3) of the U. P. Consolidation of Holdings Act by the Governor, U. P.]*

CHAPTER I

1. Short title.—These rules shall be called the Uttar Pradesh Consolidation of Holdings Rules, 1954.

2. Extent and commencement.—They shall come into force in the areas in which, and from the date on which, the Uttar Pradesh Consolidation of Holdings Act, 1953 other than Section 1, is made applicable.

3. Definitions—In these Rules, unless there is anything repugnant in the subject or context—

(1) “Act” means the Uttar Pradesh Consolidation of Holdings Act, 1953.

(2) “Section” means the section of the Act.

(3) “Consolidator” means an officer appointed by the State Government to perform the duties of a Consolidator under these Rules.

(3-A) “Consolidation Committee” means sub-Committee constituted under Section 43.

(3-B) ‘Land Management Committee’ means the Committee constituted under Section 121 of the U. P. Zamindari Abolition and Land Reforms Act, 1950.”

(4) “Lekhpal” means the official appointed as such to perform the duties of a patwari under the U. P. Land Revenue Act 1901.

4. Section 3 (8)—In affecting service of the notice giving information of the date of the publication in the village of a document, the Serving Officer may, where the member of the Consolidation Committee is not present at his residence at the time of service, or where he cannot be found after using all due and reasonable diligence,

affect service by affixation of the notice on the outer door or some other conspicuous part of the house in which he ordinarily resides or carries on business or personally works for gain.

5. Appointments. *Section 42.*—With effect from the date of the publication of the notification under Section 4, the following officers shall hold their office and perform the duties and functions noted against each in the areas in respect of which the said notification is made so long as it is not cancelled under Section 6 or the operations are closed under Section 52 :

- (1) Collector .. Assistant Director of Consolidation.
- (2) Sub-Divisional Officer... Settlement Officer.
- (3) KanungoConsolidator.

6. Section 42.—The Assistant Director of Consolidation in the district shall satisfy himse'f that necessary notifications in respect of the area under consolidation operation and as to appointment of officers under the Act have been published. He shall take steps to rectify any omissions and ensure that all the aforesaid notifications are published in respect of fresh areas coming under consolidation from time to time.

7. Section 43.— 1) Immediately after the issue of the notification under Section 4 the Consolidation Officer shall submit a report to the Settlement Officer (Consolidation) stating :—

- (a) total area of the village ;
- (b) population of the village ;
- (c) number and names of hamlets in the village ;
- (d) number of the members of the Consolidation Committee of the *Gaon Samaj* to which the village belongs.

(2) The report shall be submitted by the Settlement Officer (Consolidation), to the Director of Consolidation who shall thereupon fix the number of the members for the Consolidation Committee under the Act.

Notes.—This rule aims at proper and adequate representations of all the agricultural interests in the Land Management Committee to be constituted for the purposes of Consolidation of Holdings under Section 43 of this Act.

8. Section 43.—(1) After the Director of Consolidation has fixed the number of members of the Consolidation Committee under sub-rule (2) of rule 7, the Consolidation Officer shall call upon the Land Management Committee, to elect to the Consolidation Committee, from amongst its members possessing qualification mentioned in rule 11.

(2) The election shall be conducted by the Consolidator in accordance with the procedure laid down in rule 109 of the Zamindari Abolition and Land Reforms Rules, 1952. Any candidate aggrieved may, within thirty days of the date of election file an objection before the Settlement Officer (Consolidation), whose decision shall be final."

(3) The Consolidation Committee elected under sub-rule (2) shall function until the issue of the notification under Section 52 of the Act unless it is re-constituted or some other authority appointed in its place under sub-section (3) of Section 43, or unless the term of the Land Management Committee which elected it under sub-section (1)

of Section 43 has expired. In the latter case, it shall continue to function till such time as the new Land Management Committee elects another Consolidation Committee.

9. *Section 43.*—The Consolidation Officer shall then submit a report to the Settlement Officer (Consolidation) stating—

- (i) name, address and profession of each of the members elected in accordance with rule 8 ;
- (ii) whether all the agricultural interests are properly and adequately represented, if not, how many members will have to be nominated and what interests should they represent ;
- (iii) the number of elected members who are literate.

10. *Section 43.*—The Settlement Officer (Consolidation) may, for the purposes of facilitating consolidation proceedings, after considering the report of the Consolidation Officer and after making such further inquiry as he may deem fit, nominate, as and when necessary, one to four persons to the Consolidation Committee for the aforesaid purpose.

The names of the members so nominated together with the names of members elected under rule 8 shall be published in the village.

11. *Section 43.*—Members of the Consolidation Committee shall be preferably literate and must be—

- (1) not below twenty-one years of age, and
- (2) permanent residents of the village carrying on cultivation therein :

Provided that where such resident members are not available to make up the required number, the remaining may be elected out of the other members of the Land Management Committee.

Note.—This proviso shall not apply to Consolidation Committee set up under sub-section (1-A) of Section 43."

12. *Sections 7 and 54 (2) (c).*—(1) Immediately after the publication of the notification under Section 4, the Consolidation Officer shall communicate to the local heads of all such departments (including the Assistant Custodian of Evacuee Property), if any, as hold land in the circle in which consolidation of holdings work is about to start, the area held by the department, the *khava* numbers and the area of each plot. Each local head of the department shall be requested to confirm the correctness of the information supplied to him or to file objections and get the papers corrected and also to nominate a representative of his Department to watch its interests.

(2) The objections may be filed before the Consolidation Officer within one month from the date of the receipt of intimation in C. H. Form No. 2.

13. (1) *Section 54 (1).*—On correction of the record under Section 8, the Assistant Consolidation Officer shall, at the earliest, intimate in writing to the Consolidation Committee constituted under Section 43—

- (a) the names of *bhumidhars*, *sirdars* or *asamis* of the Gaon Sabhas, holding land without revenue or rent on rents other than cash rents ;

(b) the names of persons, if any, occupying land without title from 1361 *fasli* and subsequently, and who have not acquired any rights in the land as tenure-holders.

(2) The Assistant Consolidation Officer shall call upon the aforesaid Consolidation Committee to take action for the ejection of the persons mentioned in clause (b) and for the fixation or commutation of rent or land revenue, as the case may be, of the persons mentioned in clause (a).

14. *Section 54 (1).*—(1) The Assistant Consolidation Officer shall, in Consultation with the Consolidation Committee, appoint guardians, for purposes of proceedings under the Act, of such tenure-holders who are minors, idiots or lunatics unless such guardians have been already appointed by order of a competent Court.

(2) The guardians shall, as far as possible, be the nearest male relatives of the persons for whom they are appointed, and shall not possess an interest adverse to his ward.

(3) A list of all such guardians together with the names of their wards shall be published in the village and any person interested in the ward may file an objection against such appointment before the Consolidation Officer within fifteen days of such publication, whose orders shall, subject to the confirmation by Assistant Director of the district, be final.

15.—Where integration of villages or disintegration of a village has taken place, the existing records-of-rights and annual records of the component villages or the parent village, as the case may be, shall be deemed to be the records-of-rights or annual registers of such integrated or disintegrated villages till final records are prepared under Section 27.

CHAPTER II

16. *Section 4.*—The declaration under Section 4 shall be published in C. H. Form No. 1.

17. *Section 6*—Without prejudice to the generality of the power of the State Government to cancel the declaration mentioned in Section 4 and rule 16, it may cancel the same on one or more of the following grounds, namely, that—

- (a) the area is under a development scheme of such a nature which when completed would render the consolidation inequitable to a section of the peasantry ;
- (b) the area has suffered from some calamity from which it will take some time to recover ;
- (c) the village has already been consolidated either voluntarily or under the previous enactments and that the people of the village are satisfied with the said consolidation ;
- (d) the village is so much torn up by factions as to make any consolidation work very difficult ;
- (e) cultivation in any village is scattered, coupled with interspersal of uncultivated patches and consolidation of holdings is likely to serve no useful purpose ; and
- (f) the tract is liable to very quick and violent changes due to fluvial action of any river.

18. *Section 6.*—On cancellation of the notification under Section 4, the following consequences shall ensue as from the date of cancellation, namely :

- (a) The area shall become subject to the normal revenue administration of the district ;
- (b) matters which may have been referred to arbitration under Section 36, shall be transferred to the Court of competent jurisdiction, who shall dispose them of in accordance with the normal law and procedure ;
- (c) if the cancellation has been made for the reasons mentioned in Rule 17 (d), the costs incurred till the date of cancellation shall be recovered in accordance with the provisions of Section 33.

19. *Sections 7 and 54 (4) (c).*—The Assistant Consolidation Officer shall, in taking action under Section 7, direct the Consolidator to make a field-to-field *partial* of the village in association with the consolidation committee and submit a report to him showing—

- (a) the total number of plots in the village ;
- (b) the number of plots which have changed their shapes since the last revision of maps and records by division and accretion ;
- (c) the number of fields and their area created as a result of extension of cultivation since the last revision of maps and records ;
- (d) the number of fields and their area which have remained out of cultivation for more than six years and the reasons therefor ;
- (e) a list of mistakes detected by him in—
 - (i) the map ;
 - (ii) the *khasra* in respect of area, possession and irrigation ; and
 - (iii) the *khatauni* as a result of checking and test thereof in accordance with the provisions contained in the Land Records Manual,
- (f) the number and particulars of scattered trees and wells standing in different plots.
- (g) the source of irrigation in respect of each plot irrigated and the mode of irrigation.

20. *Section 7.*—(1) On receipt of the report of the Consolidator mentioned in Rule 19, the Assistant Consolidation Officer shall test the accuracy of lists by random sampling so as to satisfy himself that all the mistakes have been discovered. He shall *partial* all the plots listed in C. H. Forms 4 to 7 and shall, in addition, *partial* at least twenty per cent. of the remaining plots in the village.

(2) After having satisfied himself that the lists have been correctly prepared, he shall forward them together with his report for the orders of the Settlement Officer (Consolidation) through the Consolidation Officer with a certificate that he has satisfied himself that all disputes have been noted.

(3) The Consolidation Officer shall, before submitting the lists mentioned in sub-rule (2), satisfy himself of the correctness thereof after making such *partial* as he may consider necessary.

21. Section 7.—(1) Pending receipt of orders under Section 8 (2) (a), the Assistant Consolidation Officer shall collect as many tenure holders of the village as possible on a date to be fixed by him and notified in the village and try to bring about as many reconciliations as possible. He shall obtain signatures or thumb impressions of the parties concerned in token of their agreement. This work shall be done in the presence of the members of the Consolidation Committee.

(2) (a) Where any of the parties concerned is not present or where a reconciliation has not been arrived at, the Assistant Consolidation Officer shall make a summary enquiry, maintain a brief memorandum of the evidence recorded by him and tentatively decide as to what the proper entry would be.

(b) He shall then issue notices to all persons concerned with the entry, informing them of the existing and the proposed entries and calling upon them to furnish their evidence for or against the proposal on a date to be fixed by him.

22. Section 7.—(1) If on the date fixed under sub-rule 2 (b) of Rule 21 parties appear or take objection against the proposed entries, the Assistant Consolidation Officer shall take the objection into account and examine the parties, if necessary, and give them opportunity to lead evidence, oral or documentary, in support of their respective claims.

(2) The procedure relating to the hearing and decision of disputes under Section 39 of the U. P. Land Revenue Act, shall, so far as it may, apply to these proceedings :

Provided that,

(a) in all orders passed in these proceedings the Assistant Consolidation Officer shall, in his own hand, specify the precise entries to be made in the records in pursuance of his order, and

(b) any officer by whom an order has been passed under the Act may, within thirty days of such order, either on his motion or on the application of a party, correct any error or omission not materially affecting the case, after such notice to the parties as may be necessary.

(3) (a) The records of all the cases shall be made over to the Consolidator who shall be responsible for making necessary entries in the annual register, and the Assistant Consolidation Officer shall verify that the necessary entries have correctly been made.

(b) The fact that entries required by the preceding sub-rule have been made shall be noted in the record of every case before its despatch to the record room for consignment.

23. Section 8.—(1) (a) If the Settlement Officer (Consolidation) directs the Assistant Consolidation Officer to proceed under Section 8 (2) (a), the Assistant Consolidation Officer shall, in consultation with the Consolidation Committee, proceed to correct the map and entries in the record in respect of cases which are not disputed.

(b) He shall also give his finding in respect of the matters mentioned in Rules 21 and 22 and proceed to correct the entries in the light

of his finding. He shall confirm the proposed entries in respect of persons, who did not put in appearance or contest the notice despite the service.

(2) The Assistant Consolidation Officer shall then publish the records in the village. If any tenure-holder submits an application for copies of the records so corrected, the Assistant Consolidation Officer shall direct the Lekhpal to supply him with these on payment of the copying fees at the rates specified in the Land Records Manual.

(3) If an appeal has been filed under Section 8 (4), then after the decision of the appeal, and if no appeal is filed, after the expiry of twenty-one days from the date of publication of the records in the village, a clean copy of the map, *khasra* and *khatuani* shall be prepared. After comparison with original the Assistant Consolidation Officer will prepare an errata list and sign each page of the original records and the copies.

(4) The original and the copies shall also be signed by the Chairman of the Consolidation Committee and shall be submitted to the Consolidation Officer.

(5) The Consolidation Officer shall satisfy himself, by random checking, after getting such corrections made as he may deem necessary, that—

(a) all the corrections have been given effect to in the original records, and

(b) the copies have been correctly prepared and that the records have been signed by him in token of his check.

(6) The original records shall thereupon be submitted to the Collector, who shall retain it for thirteen years after the close of consolidation proceedings under Section 52 and the copies shall be returned to the Assistant Consolidation Officer for being used as the basis of consolidation proceedings.

23-A.—Where after the publication of the annual register under Section 9 it is found that any mistake has not been corrected, the person aggrieved may file an objection within a week of the publication before the Assistant Consolidation Officer. The Assistant Consolidation Officer shall hold an inquiry after giving notice to the parties concerned and submit a report to the Consolidation Officer for his final orders.

24. *Section 8.*—If the Settlement Officer (Consolidation) recommends under Section 8 (2) (b) that revision of maps or records is necessary in any village the State Government may issue a notification under Section 48 of the U. P. Land Revenue Act, 1901, and thereupon the Settlement Officer (Consolidation) will have the powers of Record Officer for that area and the Consolidation Officer will have the powers of an Assistant Records Officer, under the Land Revenue Act.

25. *Section 11 (1).*—(1) Before preparing the statements referred to in Section 11 (1) (a), the Assistant Consolidation Officer shall, in case of tracts in which a new permanent source of irrigation has been created or such a source has gone out of use since the last settlement, direct the Lekhpal to prepare from the *khasra* of the last three years a statement of wet and dry areas for such tracts.

(2) The fields irrigated in at least one out of the last three years from canals, tube-wells, masonry wells, rivers, reservoirs and *jheels* will be taken as wet. Fields irrigated from earthen wells or such nallas or tanks which dry up by the end of cold season shall not be taken as wet. If more than half the field is irrigated from the above-mentioned permanent sources in any year, it will be treated as wet :

Provided that, where the source of irrigation becomes permanently out of use, the fields irrigated from it in any of the three preceding years shall nevertheless be treated as dry.

(3) The extraction of wet and dry areas shall be done in C. H. Form No. 8.

(4) The Consolidator shall check every entry of the form and 25 per cent. entries shall be checked by the Assistant Consolidation Officer.

(5) In districts where wet area has further been subdivided into "wet canal" and "wet others" the Assistant Consolidation Officer will, after going through the Settlement reports, extract areas in the same manner.

(6) The Assistant Consolidation Officer shall explain clearly the method of extracting the wet and dry areas to the Consolidation Committees and read over the results to them. The original form signed by the Consolidator, the Assistant Consolidation Officer and the Chairman of the Consolidation Committee will be submitted to the Collector for custody along with the records referred to in Rule 23 (5) (b) while an extract in the following statement shall be retained for use :—

- (a) Number of plots ;
- (b) Area ;
- (c) Whether wet or dry ;
- (d) Class of soil to be filled up after classification has been confirmed ; and
- (e) Remarks.

The extract shall be signed by the Assistant Consolidation Officer and the Chairman of the Consolidation Committee.

(7) In the tracts in which there has been no such change as mentioned in sub-rule (1), the wet and dry area classification made at the last settlement or roster operations shall be adopted.

26. Section 11.—The Assistant Consolidation Officer shall, on the basis of the soil classification map of the last settlement, get the lines of demarcation and the symbols in the map reproduced in pencil on the map of the village prepared in accordance with these Rules.

27. Section 11.—The Assistant Consolidation Officer shall explain in detail to the Consolidation Committee the principles and methods adopted in the last settlement in the matter of soil classification. He shall along with the members of the Consolidation Committee and such other persons of the village whom the Consolidation Committee co-opts for this purpose, go over the entire village to make changes in the soil classification, where—

- (i) new area has been brought under cultivation ; or
- (ii) soil class has changed since the last classification.

It shall, however, be ensured that (a) the nomenclature adopted by the Settlement Officer, (b) the area which has been brought under cultivation after the last settlement is fitted in the same classes as adopted in the settlement, (c) changes brought about during the period following last settlement are made by pulling up or down the soil class of the last settlement and (d) the principles adopted by the Settlement Officer are not deviated from.

28. Section 11.—(1) After the Assistant Consolidation Officer has finished the soil classification of a village, the Consolidation Officer shall, in association with the Consolidation Committee, check and confirm the same and make the lines of demarcation on the map and the symbols permanent. The map shall be signed by the Consolidation Officer and the Chairman of the Consolidation Committee.

(2) The soil classification thus made shall replace, for all future purposes, the classification made at the last settlement.

29. Section 11.—(1) In a village where soil classification does not exist, the Consolidation Officer shall, after discussing with the Consolidation Committees, draw a Statement of Principles according to which soils will be classified.

(2) The statement referred to in sub-rule (1) shall be published in the village and any objection filed within 7 days of the said publication shall be examined by the Consolidation Officer and the Consolidation Committee.

(3) The Consolidation Officer shall, after the period for filing objections has expired, submit the statement referred to in sub-rule (1) to the Settlement Officer (Consolidation) along with his report and the views of the Consolidation Committee on the objections filed under sub-rule (2), and if the said statement has not been unanimously approved by the Consolidation Committee, a brief description of the points of difference.

(4) The Settlement Officer (Consolidation) shall, after examining all the material before him and after inspecting the village and after such further consultation with the Consolidation Committee as he deems necessary, approve the said statement or make necessary amendments thereto and thereafter the soils of the village will be classified accordingly.

30. Section 11.—(1) The Consolidation Officer shall direct the Consolidator to classify the soils of the village in accordance with the principles mentioned in Rule 29.

(2) The classification so made shall be thoroughly checked by the Consolidation Officer in association with the Consolidation Committee and shall be made final after the village has been inspected and soil classification approved by the Settlement Officer (Consolidation).

(3) The map with the blocks of soil classes made permanent shall be signed by the Settlement Officer (Consolidation) and the members of the Consolidation Committee.

31. Section 11.—(1) It shall be the duty of the Settlement Officer (Consolidation) to determine the rent rates for each class or sub-class of soil in the areas,

- (a) in which no rates exist,
- (b) where the Consolidation Committee decides to make a distinction between rates for land having flow and lift irrigation from canal and irrigation from other permanent source, or
- (c) where no distinction was made between wet and dry land ; and
- (d) where the Consolidation Committee considers that any soil class has so deteriorated that the rent rate of the lowest soil-class of the assessment circle cannot be applied to it, it may pull down the lowest soil-class in accordance with Rule 27.

Notes:—(1) The object of finding out the rent rates under this sub-rule is to make as exact an estimate as possible of the value of plots relatively to each other.

(2) The maximum rates for each class or sub-class soil shall not exceed the following limits :

- (a) The existing rate of wet area shall be taken to be the rate for soils irrigated by tube-wells, canal lift (*dal*).
- (b) Up to 12 1/2 per cent. of the existing wet rate may be added to it to determine the rate for soils irrigated by canal flow, (*tur*) and
- (c) Up to 12 1/2 per cent. of the wet rate may be deducted from it to determine the rate for soils irrigated by masonry wells.
- (d) In the areas in which no differentiation exists between wet and dry rates, the existing rates shall be considered to be rates for land irrigated by masonry well and a maximum addition of 12·5 per cent. may be made to the existing rates to arrive at wet rates for canal lift (*dal*) or tube-wells, 25 per cent. of the existing rate may be added thereto for the fields irrigated by canal flow (*tur*) ; and a deduction of 12·5 per cent may be made from the existing rate to arrive at the rate for dry land of that class.

(2) The Settlement Officer shall clearly explain to the Consolidation Committee the purpose of determining the rent-rates and ask them to propose rates for each class of soil and for the wet and dry areas in each class of soil.

(3) If the Settlement Officer agrees with the proposals, he shall confirm them and furnish a copy of the schedule of rent-rates to the Consolidation Committee and the Assistant Consolidation Officer duly signed by him.

(4) If the Settlement Officer does not agree with the proposals he shall submit for the orders of the Assistant Director of Consolidation of the district the proposals made by the Consolidation Committee, the points of difference between him and the Consolidation Committee and the reasons why he does not accept the views of the Consolidation Committee. The orders of the Assistant Director of Consolidation shall be final and copies of the schedule of rent-rates so approved shall be furnished as in sub-rule (3).

82 Sections 10-A and 10-B.—(1) Any person desiring his share of a joint holding to be partitioned or his separate holding to be amalgamated with another shall at any time after the publication of the notification under Section 4, but before publication of the annual registers under Section 9 or of the notification under Section 10, as the case may be, file application before the Consolidation Officer for this purpose.

Note :—If, as a result of the publication of corrected records under Section 9, the applicant finds that the particulars of the holding mentioned in his application have changed, he may apply for the correction of the same within 15 days of the publication of the final records.

(2) The application shall contain the names and addresses of the tenure-holders concerned, the *kharsa* number and the area constituting the holding affected, the share of the applicant and the land revenue of the holdings. In case of an application for amalgamation of holdings the consent of the tenure-holders with whom the amalgamation is sought should also accompany the application.

(3) The application shall be in C. H. Form Nos. 9 and 10, and shall be in respect of all the holdings in which the applicant has a right or title.

(4) The Consolidation Officer shall inform the parties and after hearing them pass orders on the applications. Any person aggrieved by the order of the Consolidation Officer may, within fifteen days of the date of the order, file an appeal before the Settlement Officer (Consolidation) whose order shall, subject to the decision of the arbitrator under Section 12 of the Act on a question of title, be final.

33. Section 11.—(1) The Lekhpal shall be ordered to prepare the following statements :—

- (a) A statement of plots in C. H. Form. No. 11 showing the area of the plot, class of soil entered in the last settlement or roster operations, class of soil newly determined, class of soil if altered in appeal, sanctioned hereditary rent-rate and valuation of plot;
- (b) a statement of all holdings or farms of compact area of 6 1/4 acres or more in C. H. Form No. 12 ;
- (c) a statement of valuation of trees other than trees standing in a grove or in the land belonging to the State or *Gaon Samaj*.

This statement shall be in C. H. Form No. 13 and shall show the number of plot in which a tree stands, the number, kind and valuation of the trees in each plot and the name of the tenure-holder to whom they belong ;

- (d) a statement of wells and improvements in C. H. Form No. 14 showing the number of the plot in which the well or the improvements are situate, the name of the owners of the wells or the improvements and the nature of improvements ;
- (e) a statement showing the names of tenure-holders who have applied for the partition of their holdings, number of holdings, area of the plots, class of soil, rates applicable, rental value and the share of each co-tenure-holder in C. H. Form No. 15 ;
- (f) a statement showing the names of tenure-holders who have applied for amalgamation of their holding in C. H. Form No. 16.
- (g) list of plots whose soil classification has changed since last soil classification due to changes, such as opening of new canals, means of irrigation, extension of abadi, etc. in C. H. Form No. 17.

(h) a statement in C. H. Form No. 18 showing the plots which are subject to fluvial action of any river.

(2) The Consolidator shall cause to be prepared the following statements :

(a) An alphabetical statement of tenure-holders in C. H. Form No. 19. This statement shall show the numbers of Khatauni Khatas under various tenures held by a holder, the specification of share and the serial number of formation of chaks with dates given in the Proceedings Book.

(b) A statement of tenure-holders in C. H. Form No. 20 known as Khatauni chakbandi showing the names and particulars of tenure-holders with their shares in Khatas, class of tenure block number, khasra numbers with details of cultivated and uncultivated areas, rental value of plots, rental value of the holding proportionate to the shares of the co-sharers, proportionate rent and revenue of each co-sharer and rental value of the holding of Asamis, if any.

34. Section 12.—(1) The statement mentioned in the foregoing Rules shall be checked by the Consolidator who will submit them to the Assistant Consolidation Officer. The Assistant Consolidation Officer shall publish the foregoing statements in the village and shall hear the objections of any person interested which may be filed within 30 days of the said publication and submit his report to Consolidation Officer after consulting the Consolidation Committee.

(2) On receipt of the report under sub-rule (1), the Consolidation Officer may in cases, other than those which he refers for arbitration under sub-section (4) of Section 12, hear the parties and take such further evidence as he considers necessary and decide the case on merits. The decision shall be announced before the parties, where they are present, in which case he will obtain their thumb-impression or signature on the order.

(3) Any person aggrieved by the order of Consolidation Officer may file an appeal within 15 days of the order before the Settlement Officer (Consolidation) whose decision, except in cases of arbitration as provided in the Act, shall be final.

(4) Parwana for amaldaramad of an order of the Consolidation Officer or the arbitrator under Section 12 shall be sent to the Assistant Consolidation Officer promptly.

35. Section 11 (1) (a).—The rent or revenue of a plot, if it is a part of a larger holding, mentioned in Section 11 (1) (a) shall be calculated in accordance with the following formula:

$$R = \frac{r_1 \times r_2}{r_3}$$

R is the rent or revenue of the plot as the case may be;

r_1 is the rental value of the plot;

r_2 is the rent or revenue of the holding to which the Plot belongs;

r_3 is the rental value of the holding.

If the plot constitutes a separate holding, assessed to rent or revenue payable in cash, the said rent or revenue, as the case may be, shall be entered in the said statement.

If the rent or revenue payable for the plot is in kind or partly in kind and partly in cash, or if the rent or revenue is not determined, the rent or revenue shall be determined in accordance with the provisions of the U. P. Zamindari Abolition and Land Reforms Act, 1951, after taking into account the nature of the rights enjoyed by the tenure-holders in the holdings in which the plots are situate.

36. Section 11.—The statement referred to in Section 11(1) (a) shall be prepared by the Lekhpal and will be checked completely by the Consolidator. The list of tenure-holders will be prepared by the Consolidator. Both the statement and the list will then be checked by the Assistant Consolidation Officer, who shall verify at least 25 per cent. entries in each and shall sign each page of these two records.

37. Section 13.—The statement and the list referred to in Section 11, the soil classification map referred to in Rules 28 and 30 and the schedule of rates mentioned in Rule 31 shall form part of the Consolidation Scheme mentioned in Section 13.

38. Section 11.—Final orders passed in cases mentioned in Rules 13 and 32 shall be incorporated in the statement mentioned in Section 11.

CHAPTER III

39. Section 14.—(1) From the map prepared or corrected in accordance with the provisions contained in the foregoing chapter the Consolidator shall prepare the following :—

(a) An outline of the village map with permanent features, e. g., abadi, canals, roads, railways, groves, pukka wells, nalas, rivers, graveyards, cremation grounds, etc. ; and

(b) Two copies of the kistwar maps.

(2) These copies will be checked and signed by the Assistant Consolidation Officer.

40. Section 15.—(1) The Assistant Consolidation Officer shall, in consultation with the Consolidation Committee, demarcate on the copy of the map prepared under clause (b) of sub-rule (1) of Rule 39, blocks mentioned in sub-section (2) of Section 15 and shall also prepare a note describing the principles according to which blocks have been demarcated.

(2) The map together with the note shall be forwarded to the Consolidation Officer who shall verify by local inspection and in consultation with Consolidation Committee the correctness of the demarcation so made.

(3) The Consolidation Officer shall make such corrections in the demarcation lines of the map as may be necessary and to which the Consolidation Committee agrees. In case of disagreement, he shall refer the matter for orders of the Settlement Officer (Consolidation) with a report giving reasons for the change suggested by him and the reasons given by the Consolidation Committee against the change.

(4) The lines of demarcation of the blocks shall be made permanent
 (a) where there is no difference of opinion between the Assistant Consolidation Officer and the Consolidation Committee, (b) where there is difference of opinion, after the Settlement Officer (Consolidation) has passed orders thereon.

41. Section 14. (1) The Assistant Consolidation Officer shall thereafter prepare the preliminary statement of principles mentioned in Section 14 in C. H. Form No. 21 together with an explanatory memo giving reasons for each proposal and place it before the Consolidation Committee for their opinion.

(2) The Assistant Consolidation Officer shall, in consultation with the Consolidation Committee, report to the Consolidation Officer, the area available for works of public purposes mentioned in Section 14, the area to be set apart for each of the said purposes and the area which the tenure-holders will contribute in accordance with clause (e) of sub-section (1) of Section 14. The Consolidation Officer shall after inspection and any modification, which he thinks necessary, order the incorporation of these proposals in the preliminary statement of principles.

Note:—The works of public utility and common use shall include the establishment of a farm for the local school and the location of manure pits and kuris.

(3) He shall, in consultation with the Consolidation Committee, propose widening or straightening of the village roads, straightening of the field boundaries (dols) and straightening of the canal guls or water channels. The Consolidation Officer shall after inspection and any modification that he may deem necessary, order the incorporation of these proposals in the preliminary statement of principles.

(4) He shall explain every clause to the Consolidation Committee and maintain a record of their opinion clausewise. The record shall be signed by members of the Consolidation Committee.

(5) Where the Assistant Consolidation Officer agrees with the views of the Consolidation Committee, he shall amend his draft accordingly and submit it for the approval of the Consolidation Officer. A clean copy of the draft shall be published in the village thereafter.

(6) Where he does not agree with the Consolidation Committee, the Assistant Consolidation Officer shall send his draft and explanatory memo together with a note dealing with the points of difference between him and the Consolidation Committee and the reasons advanced by the Consolidation Committee in favour of its points of view, to the Settlement Officer (Consolidation), through the Consolidation Officer, after whose orders the draft statement of the principles shall be amended and a clean copy thereof shall be published in the village.

42. Section 15.—The following shall also be kept in view in preparing the statement of principles mentioned in Section 14 :

- (i) In allotting land to a tenure-holder, consolidation shall be made of (a) the improvement effected by him in his holding, (b) the situation of any grove held by him and (c) the situation of the land held by him as adhivasi of any other tenure-holder.

- (ii) Where a tenure-holder has to be allotted land in more than one block, he shall, except for special reasons, be allotted land on the boundary of the two blocks so as to form a single *chak*.
- (iii) Where a tenure-holder holds land in more than one adjoining village, he shall, so far as it is possible, be allotted land on the boundary of the villages so as to form a single *chak*.
- (iv) The adivasi land of a tenure-holder shall in so far as it can be conveniently done be so placed as to form a compact block with his bhumidhari and sirdari land.

The manner in which an encumbrance, other than an easement, on the holding of a tenure holder, is to be transferred to the holding to be allotted in place of the former, and also about the continuance or otherwise of easements on the aforesaid holdings.

43. Miscellaneous—Copies of the statement under Section 15 can be had on application in writing addressed to the Consolidation Committee to which shall be affixed copy stamp of Rs. 2-8 for each copy. It shall be prepared by the Consolidator and duly certified by Assistant Consolidation Officer, and passed on to the Consolidation Committee for issue to the applicant.

43-A.—All objections under sub-section (2) of Section 16 of the Act shall be in writing signed by the person making them and showing in what manner his interest has been affected by the scheme.

43-B. (1) On receipt of the objections under sub-section (1) of Section 17, the Consolidation Officer shall take into consideration the desirability of a local inspection of the village and where local inspection is necessary, he shall give due notice of the date of the inspection to the parties concerned and to the Consolidation Committee.

(2) In case of local inspection, he shall make a brief note of the material facts observed by him on the spot, hear the objector and take such other evidence as may be necessary to decide the objection.

(3) He shall thereafter pass his order and pronounce it before the objector and the Consolidation Committee.

44. Section 19.—(1) In calculating the compensation for trees, wells, buildings or any other improvement, under clause (d) of sub-section (1) of Section 19, the Assistant Consolidation Officer shall take into account the age and kind of the trees, wells, buildings etc., the irrigation area commanded by the wells and the state of repairs of the wells or buildings. He shall also take into account the estimate made by the Consolidation Committee.

(2) The Consolidation Officer at the time of scrutinizing the statement of proposals may, if he considers necessary, request the Settlement Officer (Consolidation) to ask the officers of the Forest Department or the Public Works Department, as the case may be, to estimate the compensation payable for trees, wells, buildings or other improvement.

45. As a preliminary to preparation of statement of proposals the Assistant Consolidation Officer shall cause to be prepared a statement of tenure-holders in C. H. Form No. 22 showing the particulars mentioned below :

- (a) Name of tenure-holders.

- (b) Rent or revenue and rental valuation of all the Khatas of a tenure-holder.
- (c) Proportionate rent or revenue and rental valuation of all the holdings of each co-sharer according to his share in a khata, if necessary
- (d) Deductions, if any, to be made as a result of rateable contribution towards land for objects of public utility.
- (e) Net valuation of holdings or shares as the case may be.

46. The statement of proposals shall be prepared by the Assistant Consolidation Officer in Form C. H. No. 22 and submitted to the Consolidation Officer who may, after scrutiny, make such changes as may be deemed necessary. It shall then be put up before the Consolidation Committee by the Assistant Consolidation Officer who shall explain to them every item, and after taking into account the opinion of the members of the Consolidation Committee publish it in the village for objection, where he agrees with the views of the Consolidation Committee. Where the Assistant Consolidation Officer does not agree with the views of the Consolidation Committee, the statement along with a note containing the said views of the Consolidation Committee and the reasons therefor shall be submitted to the Settlement Officer (Consolidation) through the Consolidation Officer for decision.

47. *Section 19.*—The statement of proposals shall also state explicitly :

- (1) The area to be allotted to the asamis and adhivasis of the tenure-holders and the rent payable therefor.
- (2) The encumbrance attached to a holding, the amount, name of the person in whose favour the encumbrance exists and the nature and terms of the encumbrances.
- (3) The areas of abadi land or land used for public or common purpose proposed to be amalgamated with any holding and showing the areas earmarked for public or common purposes

48. *Section 19.*—An extract of the statement of proposals in C. H. Form No. 24 concerning each tenure holder shall be supplied free of cost to tenure-holder concerned or his guardian or representative before the statement of proposals is published in the village. These extracts shall be prepared by the Lekhpals and shall be certified by the Consolidator. The extract shall contain the following information :

- (1) The name, parentage and address of the tenure-holder.
- (2) Number of all the plots and their area held by the tenure-holder in any capacity whatsoever.
- (3) The land revenue or the rent payable by the tenure-holder.
- (4) The rental value of the holding of the tenure-holder.
- (5) The new plots, the area of each and its rental value to be allotted to the tenure holder as a result of the consolidation of holdings.
- (6) The rent or revenue of the new plots as the case may be.

- (7) The amount of compensation payable by the tenure-holder or payable to him and the name of the person from whom the amount of compensation is to be received by the tenure-holder or is to be paid by the tenure-holder.
- (8) The name of adhivasi or asami of the tenure-holder, the number of plots, area and the rent of the land to be given to the adhivasi or asami.
- (9) The name of the person in whose favour the encumbrance exists, amount of encumbrance and terms and condition of encumbrance transferred to the new land.
- (10) The arrangements proposed for public conservancy, including the place for kuris, which will remain outside the abadi.

49. *Section 21.*—The objections on the statement of proposals shall be heard by the Consolidation Officer from day to day in the village concerned. He shall take into account the opinion of the Consolidation Committee, the report of the Assistant Consolidation Officer along with the inspection notes and the objections raised by tenure-holders, and in accepting or rejecting the objections, he shall briefly record his reasons therefor.

50. *Section 23.*—After the objections have been finally disposed of and the orders have been given effect to in the statement of proposals, a clean copy of the statement incorporating the orders on the objections shall be prepared along with a copy of the map showing the arrangements of plots finally decided upon and the location of the land set apart for public purposes. Both shall be published in the village.

CHAPTER IV

51. *Section 24.*—The Consolidation Officer shall, in consultation with the Consolidation Committee, specify the date on which the consolidation scheme shall be given effect to.

52. *Section 25.*—The Assistant Consolidation Officer shall direct the lckhpals to prepare the allotment order of every tenure-holder and for public purposes in C. H Form No. 25. The order shall show the following :

- (1) The name of the village, pargana, tahsil and district.
- (2) Name, parentage and address of the tenure-holder.
- (3) The name of the khata, khatauni, number of plots, their area, rent or revenue, as the case may be, of each khata and valuation of each plot of the holdings held by tenure-holders in any capacity wha'soever.
- (4) The number of plots together with a description of the rights to be enjoyed by the tenure-holder therein, their area, valuation and the rent or revenue, as the case may be, of the allotted plots.
- (5) Number of trees belonging to the tenure-holder situated in his original holdings along with their value.

- (6) Number of trees situated in the allotted plot along with their value.
- (7) Wells or other improvements in the original holding of the tenure-holders along with their respective value.
- (8) Wells or other improvements situated in the allotted plots, along with their respective value.
- (9) The amount of compensation which the tenure holder has to pay or has to receive for the trees crops, wells or other improvements together with the names and addresses of the persons from whom he is to receive the amount or to whom he has to pay the same.
- (10) The details of final proposals with regard to items mentioned in clauses (8), (9) and (10) of Rule 48.
- (11) The old boundary lines which have to be obtained by the tenure-holder in order to give effect to consolidation scheme; and
- (12) the details of the area earmarked for public purposes.

53. Section 25.—(1) The allotment order shall be checked and signed by the Assistant Consolidation Officer.

"Part I of the allotment order shall thereupon be handed over to the tenure-holder or his guardian or representative, as the case may be, and Part II thereof shall be handed over to the Chairman of the Consolidation Committee."

(2) Where there are more than one tenure-holders in a holding the allotment order shall be handed over, free of cost, to the representative of the tenure-holders appointed by them. Each of the remaining tenure-holders will be entitled to receive a copy of the same on payment of a fee of annas four per copy payable to the lekhpal.

54. After the final allotment orders have been distributed, the Consolidator shall demarcate the new boundary lines of each chak in the manner to be specified by the Settlement Officer (Consolidation). A charge of Re. 1 per acre shall be made from those tenure-holders who do not construct their own boundary lines.

55. Section 28.—(1) On May 15, next following the date of the enforcement of the consolidation scheme, the Consolidation Officer shall, after inspecting the village, find out the number of tenure-holders who have, by mutual agreement, entered into possession of the holdings allotted to them as a result of the consolidation scheme. Where change of possession has not taken place, he shall direct the Consolidator to effect the change of possession with the help of the lekhpal. This work shall be completed by June 15.

(2) The procedure to be followed by the Consolidator in affecting the change of possession shall be the same as provided in the Civil Procedure Code for delivery of possession of immovable property in execution of a decree and the Consolidator shall, for this purpose, exercise the powers of the officers of the Court appointed in this behalf.

(3) The Consolidator or any other officer employed in the consolidation work under the Act and the Rules shall be deemed to be a public servant within the meaning of Section 21 of the Indian Penal Code.

"(4) Where a person from whom possession has been transferred, tends and gathers the standing crop in accordance with the first proviso to Section 28, he shall pay as compensation for the retention of plot or plots an amount calculated at three times the circle rate, to the tenure-holder in whose chak such plot or plots are allotted.

(5) The compensation payable under sub-rule (4) shall be payable to the tenure-holder within nine months of delivery of possession in default of which, it shall be recoverable as arrears of land revenue and the recovery shall be effected in the manner prescribed under sub-rule (2) of Rule 57".

56. (1) Where the Assistant Consolidation Officer decides that possession over crops shall also be delivered, he shall call upon the Consolidation Committee to assess the value thereof, after taking into account—

- (a) the condition of the crops,
- (b) the amount likely to be spent up to the stage of harvesting,
- (c) the estimated yield of the crop, and
- (d) the average price which the produce is likely to fetch at the time of harvesting in the village, and the value so assessed shall be taken into consolidation by him in determining the compensation to be paid for the loss of the crop.

(2) The appraisal mentioned in sub-rule (1) shall be made in the presence of tenure-holders concerned unless they fail to attend it despite notice. A record of the proceedings shall be maintained and signed by the Assistant Consolidation Officer and the Chairman of the Consolidation Committee.

(3) The result of the appraisal and the order of the Assistant Consolidation Officer shall then be announced.

(4) Any person aggrieved by the order of the Assistant Consolidation Officer may file an appeal before the Consolidation Officer within 15 days of the order.

(5) Any person aggrieved by the order of the Consolidation Officer under sub-rule (4) may within 30 days of the order, file an appeal before the Settlement Officer (Consolidation), whose decision shall, except as otherwise to be provided or under this Act, be final.

57. *Section 29.—* (1) The persons by whom the compensation determined under the foregoing rule is payable shall pay it to the person to whom it is to be paid and file the receipt therefor before the Assistant Consolidation Officer, who shall get it verified from the payee.

(2) If the compensation has not been paid within the period specified under Section 29 (2), the Assistant Consolidation Officer shall make out a list of the persons from whom any amount is to be recovered and submit the same to the Collector through the Consolidation Officer for recovery as arrears of land revenue. The list shall contain sufficient details regarding the person and the amount including interest to enable the Collector to make the recovery.

(3) The person who is entitled to receive the compensation may file an application before the Assistant Consolidation Officer for payment order for the amount determined in his favour, and the Assistant Consolidation Officer shall, after satisfying himself of the correctness of the claim, issue the payment order.

58. *Section 33.*—(1) The Director of Consolidation shall fix the standard of work for each item necessary in the course of consolidation of holdings in each district.

(2) The Assistant Consolidation Officer shall immediately after the records have been brought up to date, make an estimate of the cost of the consolidation in C. H. Form 26 according to the standards so fixed.

(3) The Assistant Consolidation Officer shall thereupon distribute the estimated cost on every tenure-holder in C. H. Form 27, which shall be payable within fifteen days of the date of notice, in C. H. Form 27-A in default of which the Assistant Consolidation Officer shall submit a list of the defaulters in C. H. Form 27-B to the Collector through the Settlement Officer (Consolidation) for realization of the same as arrears of land revenue.

59. (1) A Log Book in C. H. Form No. 28 shall be maintained for each village and kept in the custody of the Lekhpal. The record of the work done on any day by the Lekpal, the Consolidator, the Assistant Consolidation Officer, and the Consolidation Officer in connection with the Consolidation Scheme of the village, shall be entered by the official doing the work on the same day on which the work is done, and the day-to-day entries shall be signed by the Chairman of the Consolidation Committee.

(2) Each of the aforesaid officials shall check the correctness of the entries made by the official subordinate to him on his visit to the village and sign the Log Book in token of his scrutiny.

(3) The Log Book shall be maintained from the date on which a declaration is made, under Section 4 and shall continue till the consolidation operations are closed in the village under Section 52, or the declaration under Section 4 is cancelled under Section 6. No information regarding the work done in connection with revisions and correction of records under Section 8 and the record operations ordered under Section 10, shall, however, be entered in the Log Book.

60.—(1) The period spent in consolidation work by the Consolidation Officer, Assistant Consolidation Officer, the Consolidator, Surveyor, Soil Classifiers, Tracers, Chairmen, Peons and Lekhpals shall be calculated with reference to the entries in the Log Book; and their pay, dearness allowance and house-rent allowance, if any, shall be determined by treating 8 working hours equivalent to one day and 24 such working days equivalent to 1 month.

(2) An amount equal to 10 per cent. of the amount calculated under sub-rule (1) shall be added to it for superior supervision including cost of training. Another 10 per cent. of the total amount so calculated, shall be added for stationery, printing charges and contingencies. The total will represent the cost of consolidation of the village and from this the rate of cost per acre shall be calculated.

61. Soon after the confirmation of the statement of principles under Section 18, a sum of Rs. 1/8 per acre shall be realised as the first instalment of cost of consolidation in advance from all concerned in C. H. Form 28-B. This shall be adjusted against the final costs recoverable under sub-section (1) of Section 33.

62. The Lekhpal shall maintain a proceeding book in C.H. Form No. 29 for recording proceedings of meetings of Consolidation Committee and an Inspection Book in C.H. Form No. 30 for the use of Inspecting Officer.

63. *Section 54 (m).*—(1) When the objection filed under sub-section (1) of Section 12 or under Section 30 or 34 involves a question of title and the same has not already been decided by a competent Court, the Assistant Consolidation Officer shall call upon the parties to file written statement about their respective claims as regards the subject-matter in dispute and also ascertain from the parties, if any suit or proceeding is pending in any Court of the first instance or in appeal.

(2) If any suit or proceeding is pending in any Court of the first instance or in appeal, the Assistant Consolidation Officer shall ascertain full particulars of the suit or proceeding from the parties and the name of the Court where they are pending and intimate the same along with the reference to the Civil Judge having jurisdiction and transmit the record to him.

(3) The Assistant Consolidation Officer shall require the parties to file, such documentary evidence, including extracts from revenue papers, as they may like to produce in support of their respective claims. He shall thereafter intimate the date on which they should attend the Court of the Civil Judge while transmitting the record to him.

(4) On receipt of the record the Civil Judge shall frame such issues as may be necessary and refer them to the Arbitrator, appointed in accordance with the provisions of Section 37, for making the award within a specified period, and intimate the parties of the date on which they should appear before the Arbitrator and obtain their signatures or thumb-impressions in token of the information.

(5) Where the Civil Judge receives information from the Assistant Consolidation Officer of the pendency of a suit or proceeding before any Court in respect of the matter referred to him for arbitration, he shall move the Court concerned to stay the suit or proceeding in question.

(6) On receipt of the reference, the Arbitrator shall afford the parties an opportunity to produce oral evidence and such further documentary evidence as may be necessary, before making the award.

(7) Where the Arbitrator has made the award, he shall sign it and give notice in writing to the parties of the making and signing thereof. The record of the case shall thereafter be transmitted by him to the Civil Judge concerned after giving intimation of the date on which the parties should appear before him.

(8) On the date so fixed, or any subsequent date to which the proceedings might be adjourned, the Civil Judge shall, with or without modifications, made by him in accordance with the provisions of Section 15 of the Indian Arbitration Act, 1940, pronounce judgment in terms of the award, where he does not consider it necessary to remit the award under Section 16, or to set aside the same under Section 30, of the aforesaid Act.

64. Where, under sub-rule (2) of Rule 63, the parties have intimated the name of the Court where any suit or proceeding is pending, the Assistant Consolidation Officer shall also intimate to the aforesaid

Court that an objection concerning the same land has been filed under sub-section (1) of Section 12 or under Section 20 or 34, as the case may be, so that the Court may take appropriate action in the suit or the proceeding regarding its stay.

65. (1) The Settlement Officer (Consolidation) may withdraw any case from the file of any Consolidation Officer or Assistant Consolidation Officer subordinate to him and may refer the same for disposal to any other Consolidation Officer or Assistant Consolidation Officer competent to deal therewith.

(2) The Director of Consolidation may withdraw any case from the file of any Settlement Officer (Consolidation) and refer the same to any other Settlement Officer (Consolidation) for disposal.

(3) The Settlement Officer (Consolidation) may require any Consolidation Officer subordinate to him to dispose of any case or class of cases, in exercise of his duties under Section 5 (2) of the Act.

66. On receipt of the report of the Assistant Consolidation Officer under sub-section (2) of Section 34, the Consolidation Officer shall hear the parties and take such further evidence as he considers necessary and decide the objection on merits. The decision shall be announced before the parties where they are present, in which case he will obtain their thumb-impression or signature on the order.

C. H. FORM 1

(Rule 16)

Declaration to make a Scheme of Consolidation

In exercise of the powers conferred by Section 4 of the U. P. Consolidation of Holdings Act, 1953, it is hereby notified that the State Government has decided to make a scheme of consolidation of buildings in the tract described below :

District	Tahsil	Pargana	Village

Secretary.

C. H. FORM 2

[Rule 12 (2)]

Intimation to heads of Government Departments or Local Bodies

To

The....(Head of Government Department of Local Body)

District.....

Sir,

Under Rule 12 of the U. P. Consolidation of Holdings Rules, 1953, I am to inform you that the landed property detailed below, is recorded in the village records as held by your department and to request you to please confirm the entry or to file an objection within one month from the receipt of this intimation to have the entry corrected. Please also nominate a representative of your department to watch its interests during the consolidation of holdings proceedings of the village;

Details of landed property

Village..... Pargana..... Tahsil..... District.....

Khasra No.	Number of Khatauni Khata for Fasli	Area in acres or settlement bighas	Description of land, such as road, school, hospital, etc.	Remarks
1	2	3	4	5

C. H. FORM 3

(Rule 18)

In exercise of the powers conferred by Section 6 of the U. P. Consolidation of Holdings Act, 1953, the Governor hereby cancels the declaration made under Section 4 of the above-mentioned Act in notification No....., dated....., in respect of the tracts described below.

District Tahsil Pargana Village

*Secretary.***C. H. FORM 4**

[Rule 19 (1) (a) to (d)]

Statement showing changes in the map and other particulars

Village..... Pargana..... Tahsil..... District.....

Total number of plots in the village	Number of plots which have changed shapes since the last revi- sion of maps and records	Fields created by extension of cultivation since the last revision of maps and records		Fields unculti- vated for more than six years		Reasons for fields show- ing in column 5 for remain- ing unculti- vated for more than six years	Remarks
		Khasra No. of fields	Area	Khasra No. of fields	Area		
1	2	3	4	5	6	7	8

Consolidator.

C. H. FORM 5

[Rule 19 (1) (e) (i)]

List of mistakes in the map

Village.... Pargana..... Tahsil..... District.....

Khasra No.	Nature and description of mistakes detected.	Remarks
1	2	3

Consolidator.

C. H. FORM 6

[Rule 19 (e) (ii) and Rule 20]

List of mistakes in the Khasra in respect of area, possession and Irrigation

Khasra No.	Nature and description of mistakes detected	Khata- ni Khata No.	Brief note and signature of the parties, if agreement arrived at before the Assistant Con- solidation Officer	Tentative entry in case of absence or disagreement of parties with brief memo. of evidence	Remarks
1	2	3	4	5	6

Consolidator

*Assistant Consolidation
Officer*

*Chairman of the
Consolidation
Committee*

C. H. FORM 7

[Rule 19 (e) (iii) and Rule 20]

List of mistakes detected in Khatauni

Village..... Pargana..... Tahsil..... District.....

Khataumi Khata No.	Nature and description of mistakes de- tected	Brief note and signature of the parties if agree- ment arrived at before the Assistant Consoli- dation Officer	Tentative entry in case of abse- nce of disagree- ment of parties with brief memo. of evidence record	Remarks
1	2	3	4	5

Consolidator.

Assistant Consolidation Officer.

*Chairman of the
Consolidation
Committee.*

C. H. FORM 8

(Rule 25)

Statement of wet and dry areas

Village.....Pargana.....District.....

Tahsil.....District.....

Khara No.	Area of the field		13 F. area		13 F. area		Source of irrigation		Result arrived at		Remarks		
	Wet	Dry	Wet	Dry	Wet	Dry	Wet	Dry	Wet	Dry			
1	2	3	4	6	6	7	8	9	10	11	12	13	14

Consolidator.

Assistant Consolidation Officer.

Chairman of Consolidation Committee.

Lekhpal

C. H. FORM 9

[Rule 32 (3)]

Application for partition of a joint holding

THE ASSISTANT CONSOLIDATION OFFICER

To
Sir, We the co-tenure-holder _____ of the joint holding detailed below request that the holding be partitioned.
I, the co-tenure-holder

We/I claim that our/my share in the joint holding is.....

Village..... Pargana..... Tahsil..... District.....

Name of co-tenure-holders with parentage and residence and their shares in the holding	No. of Khatuauni Khasra	Class of tenure	Khasra No.	Area	Land Revenue or rent	Remarks
1	2	3	4	5	6	7

We/I have been, as a result of private agreement, separately and exclusively cultivating the following plots :

Name of co-tenure-holder	Number of plots	Area			
I/We solemnly affirm that to the best of my/our knowledge and belief, the above statement is correct.					
<i>Signature of co-tenure-holder</i>					
<i>Signature of applicant</i>					
<p align="center">C. H. FORM 10 [Rule 32 (3)] <i>Application for amalgamation of separate holdings</i></p>					
To					
Sir,	We the tenure-holders of separate holdings detailed below request that the holdings be amalgamated.				
Village.....	Pargana.....	District.....			
<p align="center">THE ASSISTANT CONSOLIDATION OFFICER</p>					
<p align="center"><i>Details of separate holdings.</i></p>					
No. of Khatuani Khata	Class of tenure	Khasra No.	Area	Land Revenue or rent	Remarks
1	2	3	4	5	6
					7

Signature of tenant-holders.

C. H. FORM 11

[Rule 33 (1) (a)]

Statement of plot numbers

Village..... Pargana..... Tahsil..... District.....

Lokhſal.

Consolidator.

C. H. FORM 12

[Rule 33 (1) (b)]

Statement of Holdings of Compact Area of 6 1/4 Acres or More

Village.....Pargana.....Tahsil.....District.....

Serial No.	Number of Khatauni Khata	Name of tenure-holder with parentage and residence	Khasra number	Area	Remarks
1	2	3	4	5	6

Lekhpal.

[Rule 33 (1) (c)]

Statement of valuation of trees other than trees standing in a grove or in the land belonging to the State

Village.....Pargana.....District.....Tahsil

Serial No.	Name and address of the tenure-holders to whom trees belong	Number of Kha- tauni trees	Kind of trees in Khata	Number of trees	Approximate age of trees	Share of tenure- holders	Valuation of trees	Remarks	
1		2	3	4	5	6	7	8	9

Lekhpai

C. H. FORM 14

[Rule 33 (1) (d)]

Statement of wells and other improvements

Village.....Pargana.....Tahsil.....District.....

Serial No.	Name and address of tenure-holder to whom the well or other improvement belongs	Kharsa number of tenure-holder	Share of number of wells	Description	Dimensions and age	Area irrigated	Value of the share of the well in the value of the tenure-holder	Other improvements			Propor-tionate share of the tenure-holder	Value	Area affected	Approximate age	Remarks								
								1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	
1																							

Lekhpal

C. H. FORM 15

[Rule 33 (1) (e)]

Statement of tenure-holders who have applied for partition of their holding;

Village.....Pargana.....Tahsil.....District.....

Serial No.	Name of tenure-holders with shares of each Khatauni Khata	Khasra number of plots	Area	Class of soil	Rent rates applicable	Rental value	Remarks
1	2	3	4	5	6	7	8
							9

Lehpal.

C. H. FORM 16

[Rule 33 (1) (f)]

Statement of tenure-holders who applied for amalgamation of their holdings

Village.....	Pargana.....	Tahsil.....	District.....	New share of each tenure-holder in amalgamated Khata							
				Serial No.	No. of Khatauni Khata	Name of tenure- holder of each Khata	Khasra No.	Area of plot	Class of soil	Rent rates applicable	Rental va ue
1	2	3	4	5	6	7	8	9			

Lekhpal.

C. H. FORM 17

[Rule 33 (1) (g)]

Statement of soil classification

Village..... Pargana..... Tahsil..... District.....

Khasra number	No. of Khatauni Khata	Area	Classification at the last settlement		Modified classifications consolidation at opera- tion.		Block number	(Orders is passed in appeal to be shown in this column).	Remarks
			Wet	Dry	Wet	Dry			
1	2	3	4	5	6	7	8	9	

Consolidator.

Assistant Consolidation Officer.

Chairman of Consolidation Committee.

C. H. FORM 18

[Rule 33 (1) (h)]

Statement of plots subject to fluvial action

Village Pargana Tahsil District

Khasra number	Area	Number of Khatauni Khata	Block number	Remarks
1	2	3	4	5

Lekhpal.

C. H. FORM 19

[Rule 33 (2) (a)]

Alphabetical list of tenure-holders

Village Pargana Tahsil District

Name of tenure-holder with parentage and residence	No. of Khatauni Khata	Class of tenure	Specification of shares	Serial number of formation of chaks with date given in proceeding book	Remarks
1	2	3	4	5	6

Lekhpal.

C. H. FORM 21

[Rule 41 (1)]

Statement of Principles

Village.....Pargana.....Tahsil.....District

PART I

1. Total area of the village in acres/bighas.....
 (a) Cultivated.....
 (b) Uncultivated—
 (i) Waste land.....
 (ii) Culturable (Banjar) land.....
2. Total area of the holdings to be consolidated.....
 (a) Cultivated.....
 (b) Uncultivated area included in holdings.....
3. Total number of holdings.....
 (a) In part I of the Khatauni.....
 (b) In part II of the Khatauni.....
4. Number and area of holdings or farms of $6\frac{1}{4}$ acres or more--
 (a) Number.....
 (b) Area.....
5. Number of Khatauni Khatas to be partitioned.....
6. Number of new khatas (renumber 5).....
7. Number of khatas to be amalgamated.....
8. Number of new khatas (renumber 7).....
9. Crops grown in the villages.....

Serial No.	Name of crop	Serial No.	Name of crop
---------------	--------------	---------------	--------------

10. Classification of soil in the village adopted in the last Settlement or Roster operations after modification, if any, in consolidation operations.

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.

11. Existence or absence of irrigation facilities.

- (a) Number of tube-wells.....Areas irrigated thereby....
- (b) Number of pucca-wells.....Area irrigated thereby....
- (c) Area irrigated by canals.....
- (d) Area irrigated by other sources.....

12. The number of Blocks formed in the village under Section 15 (2) with brief description of each block with regard to quality of crops grown and irrigational facilities, etc. as per statement attached.

13. Presence of land subject to fluvial action of the river.

PART II

I.—Communications

(a) Existing means of communications

The following roads/paths emerge from or land up to the village :—

Serial No.	Road/Path	Direction	Places connected	Total area occupied	Remarks
1	2	3	4	5	6
1					
2					
3					
4					
5					
6					

(b) Proposed means of communications

(1) The following roads/paths are required to be opened :

Serial No.	Road/Path	Direction	Places connected	Total area occupied	Remarks
1	2	3	4	5	6

(2) The following roads/paths are required to be straightened, widened or closed :

Serial No.	Proposed change, i. e., whether straightening, widening or closure	Particulars of roads/ paths	New align- ment	Total area occupied	Reason for change
1	2	3	4	5	6
1					
2					
3					
4					
5					
6					

Note :—(1) The roads/paths both existing and proposed should be marked on sketch map in different inks and the plot numbers through which they run (except in cases of D. B. or P. W. D. roads) should be given in a statement to be attached.

Note : (2)—The Location of areas set apart for public utility or for common use is only tentative and is liable to be modified after preparation of "Statement of Proposals."

II.—Irrigation

(a) Existing water channels

The following water channels exist in the village :

- (1) From plot no..... to plot no
- (2)
- (3)
- (4)

(b) Proposed means of irrigation

The following changes are desirable in the courses of water channels (they should be suggested only if they are absolutely necessary) :

- 1.
- 2.
- 3.
- 4.
- 5.

(3) Reservation of areas for objects of public utility or common use and their location.

Serial No.	Object	Area	Existing location (give plot number)	Proposed location (give plot number)	Remarks
1	2	3	4	5	6
1	Plantation of trees				
2	Pasture land				
3	Manure pits				
4	Threshing floor				
5	Cremation ground				
6	Graveyards				
7	Primary or other schools				
8	Playground				
9	Panchayatghar				
10	Other such objects				

Note.—If any area is to be set apart for fisheries, mela ground, mandi, dispensary, hospital, stand for hackney carriages, religious places, place for pottery or tanning of hides, etc. they should be indicated under above other objects.

(4) Provision for public conservancy.

(5) Area to be set apart for abadi

(6) Area to be set apart for village school farm

Plot numbers	Area	Reasons
Plot number	Area	

- (7) (i) Total uncultivated area available for object of public utility and common use.....
(ii) Total uncultivated area required for objects of public utility and common use.....
(iii) Difference between 7 (i) and 7 (ii)

PART III

As far as possible the following principles shall be observed in carrying out consolidation of holdings in the village :

1. The land in the village has been divided into.....blocks in accordance with the principles contained in Section 15. The number of chaks to be allotted to any tenure-holder excluding the area earmarked for abadi and those reserved for public purposes shall not exceed this number.
2. As far as practicable only tenure-holders shall get land in any particular block who already held land therein.
3. The tenure-holders belonging to the same family shall, as far as possible, be given neighbouring chaks.
4. The location of the residential house of the tenure-holder or improvement, if any, made by him shall, as far as possible, be taken into account in allotting chaks.
5. Small tenure-holders shall, as far as possible, be given land near the village abadi.
6. An existing compact holding or farm which is $6\frac{1}{4}$ acres or more in area shall not, as far as possible, be disturbed or divided.
7. Every tenure-holder will be, as far as possible, allotted land in the block where he holds the largest part of the holding.
8. Where a tenure-holder holds land in more than one adjoining village, he shall, as far as it is possible, be allowed land in the boundary of the villages so as to form a single chak.
9. The allotment of chaks shall be made on the basis of rental value thereof.
10. In allotting land to a tenure-holder consideration is to be made of the improvement effected by him in his holding, the situation of any grove held by him and the situation of land held by him as asami of any tenure-holder.
11. If any tenure-holder is to be allotted land in more than one block he shall, if possible, be allotted land on the boundary of the two blocks to form a single chak unless there are reasons to the contrary.
12. The manner in which asamis on the existing holdings of a tenure-holder shall be transferred to the holding to be allotted to the latter.
13. The manner in which an encumbrance, other than an easement on the holding of a tenure-holder, is to be transferred to the holding to be allotted in place of the former, and also about the continuance or otherwise of easements or the aforesaid holdings.
14. Manner of settlement of compensation of standing crops

C. H. FORM 22

(Rule 45)

Statement of tenure-holders

Village.....	Pargana.....	Tahsil.....	District.....	Net valuation of holdings of tenure-holder in each block	Remarks												
					Serial No.	Name, with particulars of tenure-holders	Class of tenure	Khatauni Khata no.	Block A	Block B	Block C	Block A	Block B	Block C	Block A	Block B	Block C
				Rental valuation in each block according to share, cols. 7, 9 and 11 of C. H. Form 20)	Deductions, if any, to be made for public purposes	Rate of deduction as specified in statement of principles		9	10	11	12	13	14	15			

C. H. FORM 23
 (RULE 46)
Statement of Proposals

Village..... Pargana.....

PROPOSED HOLDING

C.H. FORM 24

(Rule 48)

Extract of Statement of Proposals

Village.....Pargana.....Tahsil.....District.....

Original holding

Name, parentage and residence of tenure- holder	Khasra number of each field held	Land revenue or rent payable	Rental value (column 8 of Form 23)	Khasra number of each field proposed to be allotted	Area of each field	Rental value (column 21 of Form 23)	Land revenue or rent of field proposed to be allotted	Name and address of the tenure- holder to whom payable	Compensation payable by the tenure-holder	Amount
1	2	3	4	5	6	7	8	9	10	

Proposed holding

Compensation payable to the tenure-holder

A· ami or adhivasi of the
tenure-holder

Compensation payable to the tenure-holder		A. ami or adhivasi of the tenure-holder		Encumbrance transferred to proposed holding							
Name and address of the tenure- holder	Amount payable by whom	Name and address of asami or adhivasi	Rent payable by the asami or adhivasi	Khasra number of field	Area	Amount of encum- brance	Conditions of encum- brance, if any	Name and address of encum- brancer	Amount of encum- brance	Conditions of encum- brance, if any	Remarks
11	12	13	14	15	16	17	18	19	20		

Encumbrance transferred to proposed holding

Name and address of encum- brancer	Amount of encum- brance	Conditions of encum- brance, if any	Remarks
17	18	19	20

C. H. FORM 25

[RULE 52]

Allotment Order

PART I

Village.....Pargana.....Tahsil.....District.....

Details of holding allotted

Name of tenure-holder with parentage and residence	Khasra number of each plot	Area of each plot in acres or settlement bighas	Rental valuation column 21 of C. H. Form 23	Class of tenure	Encumbrance attached to the allotted holding or to any specific plot contained therein	Name of encumbrancer with address and nature and condition of encumbrance	Amount
1	2	3	4	5	6	7	

Trees, wells, buildings or other improvements Compensation for trees, wells, buildings or other improvements on original or allotted holding

Number and nature of trees, wells, buildings or other improvements	Valuation (Col. 27 of Form 23)	To whom payable (with address)	Amount	By whom payable (with address)	Amount
8	9	10	11	12	13

Compensation for		Standing crops			Land revenue or rent of the allotted plots payable by the tenure-holder		Area
Name of crops with area	To whom payable (with address)	Amount	Name of crop with area	By whom payable (with address)	Amount	Name of Asami with address	Area
14	15	16	17	18	19	20	21

allotted to Asami				Description of old boundary lines which have to be obliterated by the tenuro-holder or of new enclosure to be made	Area allotted for conservancy purposes		
Khasra No.	Rental Area	Rent payable			Khasra No.	Area	Remarks
22	23	24	25	26	27	28	29

PART II

Area earmarked for public purpose

Purpose for which earmarked	Khasra No.	Area
1	2	3

Assistant Consolidation Officer.

C. H. FORM 26

[Rule 58 (2)]

Estimate of cost of Consolidation

Village Pargana Tahsil

District

Serial No.	Name of Officer who worked	Period	Salary	Dearness allowance	House rent allowance	Other allowance	Total	Amount of salary, etc for period in col. 3	Total amount of pay and wages (col. 5)	Remarks
			3	4 (b)	4 (c)					
1	2	3	a)	4 (b)	4 (c)	4 (d)	4 (e)	5	6	7
(1)	Consolidation Officer									
(2)	Assistant Consolidation Officers									
(3)	Consolidator									
(4)	Lekhpal	...								
(5)	Surveyor									
(6)	Soil Classifiers	...								
(7)	Tracer	...								

(1) Cost of superior supervision at 10 per cent. of total pay and wages in column 6.

(2) Total.

(3) Cos. of stationery, printing charges and other contingencies at 10 per cent. of the above.

(4) Total cost of consolidation.

(5) Area to be consolidated.

(6) Cost of consolidation per acre.

Checked.

Considatior.

Assistant Consolidation Officer.

C. H. FORM 27

[Rule 58 (3)]

Distribution of cost of Consolidation

Village..... Pargana..... Tahsil..... District.....

Serial No.	Khatauni Khata	Name of tenure-holder with parentage and residence	Area of holding to be consolida- ted	Estimated cost of con- solidation per acre (item 6 below remarks column of Form 26)	Cost of consolidating the holding (column 4x column 5)	Cost already deposited	Balance to be realized	Remarks
1	2	3	4	5	6	7	8	9

Check:

Consolidator
Assistant Consolidation Officer.

C. H. FORM 27-A

[R LE 58]

Notice of Demand

1. Serial number	Serial number	To.....	Whereas a sum of Rs.	Whereas a sum of Rs.	Serial number
2 Consolidation Jamabandi Khata					
3. Village					
4. Name of tenure-holder	..						
5. Amount					
6. Date of issue					
7. Name of process server					
8. Date of service					
9. Date of reported service					
10. Remarks					

is due from you on account of 1st instalment or cost of consolidation of your holdings situated in Village..... Pargana..... you are hereby required to pay the same to the Consolidator within 15 days of the date of this notice failing which necessary action to realize the same as arrears of land revenue will be taken. Given under my hand and my seal this..... day of..... 19.....

Seal

Signature of Consolidator

1st instalment
is due from you on account of 2nd instalment
of cost of consolidation of your holdings situated in Village..... Pargana..... you are hereby required to pay the same to the Consolidator within 15 days of the date of this notice failing which necessary action to realize the same as arrears of land revenue will be taken. Given under my hand and my seal this..... day of..... 19.....

Seal

Signature of A. C. O.

Signature of A. C. O.

Signature of A. C. O.

C. H. FORM 27-B

[RULE 58]

List of defaulters of Consolidation cost

Village.....Pargana.....Tahsil.....District.....

Serial No.	Name of tenure-holder with parentage and address	Serial No. o consolidation Jambabandi (Col. No. 3 of C. H. Form 28-A)	Amount to be realized as arrears of land revenue	Realization as arrears of land revenue		Signature of A. C. O.	Remarks
				First instalment	Second instalment		
1	2	3	4	5	6	7	8
						9	10

Signature of Consolidator.

Signature of Assistant Consolidation Officer.

Signature of Settlement Officer (Consolidation).

C. H. FORM 28
 (Rule 59)
Log book

Village.....	Pargana.....	Tahsil.....	District.....					
Date	Name of officer who worked	Description of work done	Quantity of work done	Time taken	Signature of Consolidator	Signature of Chairman	Signature of Inspecting Officer	Remarks
1	2	3	4	5	6	7	8	9

Note.—Separate page as in the above form will be allotted to each official in the log book.

Form 28-A RULES UNDER U. P. CONSOLI. OF HOLDINGS ACT, 1953 637

C. H. FORM 28-A

[Rule 61]

Demand and Collection Jamabandi of Consolidation cost

Village.....Pargana.....Tahsil.....District.....

PART I					
Serial No.	Name, parentage and address of tenure-holder	Khata No. of Khatauni Chakbandi (Col. 1 of C. H. Form No 20)	Area of the holdings to be consolidated	Rate of first instalment of the cost according to acre or bigha	Demand of first instalments
1	2	3	4	5	6

Collection

Number of receipt and date	Serial No. of register of daily collections	Amount realized in treasury with No. of chalan	Late of deposit with No. of chalan	Arrears	Signature of A. C. O.
7	8	9	10	11	12

PART II

Collections

Total cost of consolidation (Col. 6 of C. H. Form 27)	Balance to be realized (Col. 8 of C. H. Form 27)	Number of receipt and date	Serial No. of register of daily collections	Amount realized deposit in treasury with number of chalan	Date of Arrears	Signature of A. C. O.
13	14	15	16	17	18	19

PART III

Realizations as arrears of Land Revenue

Date of report sent for realization as arrears of land revenue	Date of realization with number of chalan as reported by the tahsil-dar	Amount realized	Remarks
First instalment	Second instalment	First instalment	Second instalment
21	22	23	24

C. H. FORM 28-B

[Rule 61]

<i>Counterfoil (A)</i>	<i>Receipt (B)</i>	<i>Coupon (C)</i>
1. Book number.	1. Book number.	1. Book number.
2. Receipt number.	2. Receipt number.	2. Receipt number.
3. Name of village.	3. Name of village.	3. Date of collection.
4. Number of Consolidation Jamabandi Khata (C. H. Form 28-A).	4. Number of Consolidation Jamabandi Khata (Col. 3 of C. H. Form 28-A).	4. Name and parentage of payer.
5. Name and parentage of payer.	5. Name and parentage of payer	5. Amount paid.
6. Date of collection.	6. Date of collection.	6. Date of collection of coupon.
7. Amount paid (in words and figures).	7. Amount paid (in words and figures).	
8. On what account (instal- ment to be speci- fied).	8. On what account (instal- ment to be specified).	
9. Signature of consoli- dator in full.	9. Signature of consolidator in full.	
10 Total brought forward.		

C. H. FORM 29

(Rule 62)

Proceedings book

Village Pargana Tahsil..... District

Date	Names of members of Consolidation Committee present	Description of Proceedings	Signature of members
1	2	3	4

C. H. FORM 30

(Rule 62)

Inspection book for Officers (Patwariwise)

Village... Pargana... Tahsil.....District

Date	Designation of Inspecting Officer	Village inspected	Mistakes detected	Compliance with date	Remarks
1	2	3	4	5	

Signature of Officer.

C. H. FORM 31

(Rule 57)

Voucher for payment of compensation

Book No.	Voucher No.	Book No.	Voucher No.
Name, parentage and residence of the claimant Compensation paid in respect of—..... Amount payable in cash :— Rs. a. p. (in words) Date.....	Head of service chargeable Received this day of 19 Rs. a. p. being the amount due to me as compensation in respect of Name, parentage and address of the claimant Village Pargana	Date	Signature of Asstt. Consolidation Officer Claimant's signature and address
		Pay in cash Rs. (in words) Rupees only.	
		Received Voucher	Signature of the Treasury or Sub- Treasury Officer
		Date	Date.....

C. H. FORM 32

Consolidator's Register of Daily Collections

Date	Serial No.	Village	Serial number of Consolidation Jamabandi (Col. 3 of G. H. Form 28-A)	Amount received.	Number of receipt	Signature of Consolidator
1	2	3	4	5	6	7

C. H. FORM 33

Consolidator's Cash Book

Name of Consolidator..... Circle No..... A. C. O. Circle No....
Tahsil.....

Date	Village	Number of Consolidation Jamabandi Khatas for which amount is to be deposited	Amount	Running Total	Entries by Assistant Consoli- dation Officer			Remarks
					Amount deposited	Date and number of Chalan	Signature of A. C. O.	
1	2	3	4	5	6	7	8	9

UTTAR PRADESH CONTINGENCY FUND ACT, 1950

(U. P. ACT NO. XIX OF 1950)

CONTENTS

<i>Sections</i>	<i>Sections</i>
	PREAMBLE
1. Short title and commencement.	solidated Fund of the State and credit thereof to the Uttar Pradesh Contingency Fund.
2. Interpretation.	
3. Establishment of the Uttar Pradesh Contingency Fund.	5. Purpose for which the Uttar Pradesh Contingency Fund may be utilized.
4. Withdrawal of a sum of four crores of rupees out of the Con-	6. Power to make rules.

**AUTHORITATIVE ENGLISH TEXT OF THE UTTAR PRADESH AKSIMIKATA
NIDHI ADHINIYAM, 1950**

An Act to provide for the establishment of a Contingency Fund for the State of Uttar Pradesh

Preamble.—Whereas Article 267 (2) of the Constitution of India provides *inter alia* that the Legislature of a State may by law establish a Contingency Fund for the State ;

It is hereby enacted as follows ,

Preliminary Note.—For S. O. R., see *Gaz. Extra.* d. April 19, 1950.

For discussion, please see L. A Pro., d. April 21, 1950 in Vol. LXXI, pp. 260—266, and d. Aug. 7, 1950 in Vol. LXXX, p. 14, and L. C. Pro., d. April 24 and 26, 1950 in Vol. XV, pp. 548, 562—573 and d. Sep. 6, 1950 in Vol. XVII, p. 23.

Passed in Hindi by the Uttar Pradesh Legislative Assembly on April 21, 1950, and by the Uttar Pradesh Legislative Council on April 26, 1950.

Received the assent of the Governor on May 1, 1950, under Article 200 of the Constitution of India and was published in *Gaz. Extra.* d. May 2, 1950.

1. Short title and commencement.—(1) This Act may be called the **Uttar Pradesh Contingency Fund Act, 1950**.

(2) It shall come into force at once.

2. Interpretation —In this Act, “the Fund” means the **Uttar Pradesh Contingency Fund** established under Section 3

3. Establishment of the Uttar Pradesh Contingency Fund.—On the commencement of this Act, the State Government shall establish in and for the State of Uttar Pradesh a fund called the **Uttar Pradesh Contingency Fund**.

4. Withdrawal of a sum of four crores of rupees out of the Consolidated Fund of the State and credit thereon to the Uttar Pradesh Contingency Fund.—The State Government shall, on the commencement of this Act, withdraw a sum of four crores of rupees out of the Consolidated Fund of the State and place it to the credit of this Fund.

5. Purpose for which the Uttar Pradesh Contingency Fund may be utilized —The Fund shall be placed at the disposal of the Governor of Uttar Pradesh, who shall not expend it except for the purpose of making advances from time to time for meeting unforeseen expenditure of the State, pending authorization of such expenditure by the Legislature of the State under appropriations made by law and, immediately after the coming into operation of such law, an amount equal to the amount or amounts advanced by the Governor for the purposes aforesaid shall be deemed to have been placed to the credit of the Fund and the amount so transferred shall for all purposes be deemed to be a part of the Fund.

6. Power to make rules.—The State Government may, by notification, make rules to carry out all or any of the purposes of the Act

THE UTTAR PRADESH (TEMPORARY) CONTROL OF RENT AND EVICTION ACT, 1947

[UTTAR PRADESH ACT III OF 1947]

CONTENTS

Sections

1. Short title, extent, commencement and duration.
- 1-A. Saving.
2. Definitions.
3. Actions on eviction.
- 3-A.
4. Payment of any additional payment over rent prohibited.
- 5-A Control of Rent.
6. Procedure in suit.
7. Control of letting.
- 7-A.
- 7-B.
- 7-C.
- 7 D.
- 7-E.
- 7-F.
- 7-G.
8. Penalty.

Sections

9. Continuance of orders made under Defence of India Rules.
10. Effect of orders inconsistent with other enactments.
11. Attempts etc., to contravene orders.
12. Offences by Corporations.
13. Protection for action taken under the Act.
14. Execution of pending decrees for eviction.
15. Pending suits for eviction.
16. Orders under the act not to be questioned in any Court.
17. Rule-making power.
18. Repeal and Saving U. P. Ordinance No. III of 1946.

Rules.

An Act to provide for the continuance during a limited period, of powers to control the letting and the rent of residential and non-residential accommodation and to prevent the eviction of tenants therefrom.

Whereas the orders made under clause (bb) of sub-rule (2) of Rule 81 of the Defence of India Rules will, in consequence of the revocation of the Proclamation of Emergency made under sub-section (1) of Section 102 of the Government of India Act, 1935, cease to have effect after September 30, 1946;

And whereas due to the shortage of accommodation in the Uttar Pradesh it is expedient to provide for the continuance during a limited period of powers to control the letting and the rent of such accommodation and to prevent the eviction of tenants therefrom;

It is hereby enacted as follows :—

Preamble :—The preamble to an Act is not the operative portion of the statute¹. It is often no more than a recital of some of the inconveniences sought to be removed by the enactment². The enabling words of the Act may be carried beyond the preamble³. And when a section operates beyond the ambit of the preamble, the section must govern the case and not the preamble, even though it may be inconsistent⁴. Where therefore the operative portion of an enactment is clear and unambiguous, the preamble which is not the operative part of the Act, cannot control or extend it⁵. But where the language of the operative part of statute is not clear the preamble may be very usefully referred to in order to explain and elucidate it⁶. The preamble is a key to the construction of the statute⁷. A statement in a preamble of a statute as to its ultimate objects may be useful as throwing light on the nature of the matter legislated and must undoubtedly be taken into consideration⁸.

1. *Mohd. Yusuf v. Imtias Khan*, 1939 O 131=14 Lucknow 492.
2. *Badi Prasad v. Ram Narain Singh* 1939 A 157.
3. *Secretary of State v. Ma'laruju of Babbitti*, 46 A 312.
4. *Dalsingar Singh v. Mst. Jainath Kaur*, 1940 O 138.
5. *Badi Prasad v. Ram Narain Singh*, 1939 A 157.

6. *Dalsingar Singh, v. Jainath Kaur*, 1940 O 138.
7. *Mst. Savitri Devi v. Dwarika Prashad*, 1939 A 205; *Naga Hoong v. The Queen*, 7 Moi. I. A. 72 (99).
8. *Mst. Rajpal Kaur v. Sarju Rai*, 1936 A 507; *Raman Das v. State of U. P.*, 1952 A 703; *Karam Chand Thappar v. Vijan-o-d*, 1952 A 599=1952 A L J 274.

Restrictions—if reasonable.—The restrictions placed by the Act upon the exercise of fundamental rights of the citizen are not of a nature which can be described as “unreasonable” and so they cannot be said to be *ultra vires* ⁹.

1. Short title, extent, commencement and duration.—(1) This Act may be called, “The Uttar Pradesh (Temporary) Control of Rent and Eviction Act 1947”.

(2) It shall extend to the whole of the Uttar Pradesh.

(2-a) It shall apply to every municipality and notified area established under the U. P. Municipalities Act, 1916, and to areas situated within 2 miles of such Municipality or notified area :

Provided, however, that the state Government, if satisfied, that it is necessary so to do in the interest of the general public residing in a town area constituted under the Town Areas Act, 1914, or in any other area, may by notification in the official *Gazette* apply the Act, or any part thereof, to such Town Area or other areas.

Provided further that the state Government may likewise :

- (i) Cancel or amend any notification issued under the preceding proviso ; or
- (ii) declare that the Act shall cease to apply to any municipality or notified area or other area as may be specified.

and the provisions of Section 6 of the U. P. General Clauses Act, 1904, shall apply upon such cancellation or declaration as if this Act or the portion had been an enactment repealed in the local area concerned by an Uttar Pradesh Act.

Provided also that nothing in this Act shall apply—

- (i) to any premises belonging to the State Government or Central Government,
- (ii) to any tenancy or other like relationship created by a grant from the State Government or Center Government in respect of premises taken on lease or requisitioned by such Government,
- (iii) to any tenancy or other relationship in respect of any plot of land not covered by roofed structure :

(3) It shall be deemed to have come into force on the first day of October, 1946.

(4) It shall cease to have effect on the expiry of September 30, 1958, except as respects things done or omitted to be done before the expiration thereof, and Section 6 of the Uttar Pradesh General Clauses Act, 1904, shall apply upon expiry of the Act as if it had then been repealed by an Uttar Pradesh Act.

Legislative Changes:—The sub-section (2-a) which was added to the Principal Act by U. P. Act XLIV of 1948, has been substituted by U. P. Act XVII of 1954. In sub-section (4) the figures “1958” have been substituted for the figures “1954” by *ibid*, extending the life of the Principal Act for another 4 years.

Title.—The title of an Act may be resorted to explain an enacting clause, where doubtful ¹⁰. The title of an Act is a part of the Act ; may be referred to for the purposes of ascertaining the general scope and of throwing light upon its construction. This is, however, subject to the condition that if the language,

9. *Ram Krishna Dhiani v. Radhamal, 1952 A W R 139 (H C) Smt. Ram Katori v. The Rent Control and Eviction Officer, Agra, 1955 A 543;*

Murari Lal Solan v. State, 1954 A L J 711
10. *Huna Chunder v. Shooyu Dhone, 9 W R 402, 404, 405, (F B).*

object and scope of the Act are not open to doubt, the enacting part cannot be restricted, extended or modified by reference to the title or the preamble¹¹.

Commencement.—The United Provinces (Temporary) Control of Rent and Eviction Act, 1947, was deemed to have come into force on 1st day of October, 1946, by virtue of Section 1 (3) of the Act. Once the operation of a statute is made retrospective so as to take effect from a particular date, it must be taken that the Act was actually passed on that date, no matter if in point of time it came into existence on a subsequent date¹². However if the Act is extended to a particular area, it would make the Act applicable to that particular area from the date of extension and not from the date of its commencement¹³. The Amendment Act came into force on 14th December, 1948, when it received the assent of the Governor-General under Section 76 of the Government of India Act, 1935, as adapted by the India (Provisional Constitution) Order, 1947, as Act 44 of 1948, excepting Section 7-B, which came into operation at the time appointed thereby i. e., after three months. The Act has since been further amended by Acts IX and XVII of 1951, Act XXIV of 1952 and Act XVII of 1954.

Municipality—Meaning.—“Municipality” means any local area which is a municipality by reason of a notification issued under Section 3 of the U.P. Municipalities Act II of 1916 or, subject to the provisions of the said section, any local area which was a municipality at the time immediately preceding the commencement of the Municipalities Act. Section 3 of the Municipalities Act provides that the Local Government may by notification, published in the *Gazette*, (a) declare any local area to be a municipality, (b) declare any municipality having a population of less than 1,00,000 inhabitants to be a city, (c) define the limits of any municipality, (d) include or exclude any area in or from a municipality and (e) cancel any notification under any of the preceding clauses. This power to issue a notification is subject to the condition that it must be issued after the previous publication required by Section 4 of the Municipalities Act and where the notification is in respect of a local area which comprises or contains the whole or a portion of a cantonment, with the previous sanction of the Governor-in-Council (Vide Sections 1 (a) and 3 of the U.P. Municipalities Act). It is to be noted that the words “any local area” used above show that there is nothing in the Municipalities Act which make it compulsory that the entire area within the municipal limits must be compact area consisting of contiguous parts. The combination of detached area is not prohibited¹⁴.

Notified Area.—has been defined under Chapter XII of the U. P. Municipalities Act II of 1946. Under Section 337 of the said Act, the Local Government may declare by notification that in respect of any local area other than a municipality, town area or agricultural village, it is desirable to make administrative provisions for some or all of the matters described in Section 7 of the Municipalities Act by extending thereto the provisions of Chapter XII. A local area in regard to which a notification has been issued is called a Notified Area.

Town Area—Means any local area which the local Government has declared or defined under Section 3 of the U. P. Town Areas Act II of 1912 to be a town area (Vide Section 8 of the Town Areas Act). Section 3 of the said Act lays down that the local Government may by notification in the *Gazette*, (a) declare any town, village, suburb, bazar or inhabited place to be a town area, and may unite, for the purposes of declaring the area constituted by such union, to be a town area the whole or any portion of any town, village, suburb, bazar or inhabited place with the whole or any portion of any town, village, suburb, bazar or inhabited place, (b) define the limits of any town for the like purpose, (c) include or exclude any area in or from any town area so declared or defined provided that an agricultural village shall not be declared or included within the limits of a town area.

Cantonment Area—Meaning.—No definition has been given in this Act. Section 3 of the Cantonment Act II of 1924 defines “Cantonment”. It lays down that the Central Government may by notification in the Official *Gazette*, declare any place or places in which any part of his Majesty’s regular forces or regular Air Force is quartered or which being in the vicinity of any such place or places is or are,

- 11. *Abdullah Khan v. Bahram Khan*, 1935, Peshawar 69.
- 12. *Radhe Lal v. Mst. Hareti*, 1952 A W R 14 (16)= 1952 A L J 30.
- 13. *Shiam Sunder Das v. Shagun*, 1952 A L J 102; *Rup Lal v. Ram Sarup*,

- 1950 A 504=1950 A L J 345; *Ram Chand v. Ram Sarup*, 1961 A L J 157; *Niranjan Lal Bhargava v. Ram Kali Devi*, 1950 A L J 642.
- 14. 8 A W R 181.

required for the service of such forces to be a cantonment for the purposes of that Act and all other enactments for the time being in force, and may by a like notification define the limits of any cantonment for the aforesaid purposes. Sections 4 and 5 of the Cantonment Act provided that the Central Government may by notification include any local area within cantonment and such area shall thereupon become subject to the Cantonment Act and to all other enactments for the time being in force throughout the cantonment and to all notifications, rules, regulations, bye-laws, or orders and directions issued or made thereunder. The "Cantonment Area" would therefore mean the cantonment and the area included therein under the provisions of Section 4 of the Cantonment Act.

Areas subject to the Act.—The provisions of the Act shall apply to the following :—

- (a) To every municipality, and notified area established under the U. P. Municipalities Act, 1916.
- (b) Areas situate within two miles of every municipality or Notified Area.
- (c) Town areas or any other areas to which the Act may be extended by notification in the Official Gazette.

Act not applicable.—The provisions of the Act do not apply to the following :—

- (1) Premises belonging to the State or Central Government.

(2) Tenancy or like relationship created by a grant from the State or Central Government in respect of premises taken on lease or requisitioned by Government.

- (3) Premises not covered by roofed structure.

Areas to which Act extended.—The Act has been extended to the following areas :—

District Almora

Pithoragarh
Lohagehat
Tarikheta and five miles all round
Someshwar
Garur
Bageshwar
Sukhidang

District Asamgarh

Mau

District Ballia

Rasra

District Banda

Karwai

District Basti

Basti

District Bijnor

Kiratpur

Nahtaun

District Dehra Dun

Rajpur

Rishikesh

District Garhwal

Dogadda

Pauri

Kotdwara

District Mainpuri

Shikohabad

District Musaffarnagar

Shamli

Khatauli

District Naini Tal

Tanakpur

Bhowali

Ramnagar

District Aligarh

Mursan

Notification No. 2262-XXIX-B
(D4). 893-46, dated 12th July,
1947, Published in U. P. Gazette,
dated 19th July, 1947, pages 407-8.

} Not. No. 832-Geo.-61-48, dated 12th May, 1949,
published in U. P. Gazette, dated 1st May, 1949,
Part I, page 387.

<i>District Budawar</i>	Not. No. 2366-XXIX-B (D4)-1947, dated 17th July, 1947, published in U. P. <i>Gazette</i> , dated 28th July, 1947, Part I, page 558.
Islamnagar	
<i>District Bulandshahr</i>	
Aurangabad	
Siana	
Gulsothi	
Shikarpur	
Dadri	Not. No. 456-XXIX-B (D3)-8-46 dated 17th April, 1947 published in U. P. <i>Gazette</i> , dated 17th April, 1947, Part I-A page 294.
Dankaur	
Jahang	
Pahassu	
Chattari	
Babupura	
Disibi	
Anupshahr	
<i>District Etawah</i>	Not. No. 3718-XXIX-B (D4)-28 dated 17th September, 1947, published in U. P. <i>Gazette</i> , dated 27th September, 1947, Part I-A page 559.
Auraiya	
<i>District Garhwal</i>	Not. No. 1564-XXIX-B-B (D4)-1947, dated 17th July, 1947, published in U. P. <i>Gazette</i> , dated 28th July, 1947, Part I, page 558.
Srinagar	
Nandprayag	
Amothi	
Rudraprayag	
Chamoli	
Satpuli	
Karanprayag	
Paidul	
Banghat	
<i>District Garhwal</i>	Not. No. 3276-XXIX-B (D4) dated 11th September, 1947, published in U. P. <i>Gazette</i> , dated 20th September, 1947, Part I, page 696.
Jahrikhal	
<i>District Moradabad</i>	
Hasenpur	Not. No. 2909-XXIX-B(D4)-31-47, dated 26th September, 1947, published in U. P. <i>Gazette</i> , dated 4th October, 1947, Part I, page 595.
<i>District Hamirpur</i>	
Mahoba	
Beth	
<i>District Meerut</i>	Not. No. 119, XXIX-B (D-2), dated 12th March, 1947, published in U. P. <i>Gazette</i> , dated 15th March, 1947, Part I, page 169.
Mewana	
Sardhana	
<i>District Nainital</i>	Not. No. 2358 XXIX-B (D4)-2 Edus, dated 16th July, 1947, published in U. P. <i>Gazette</i> , dated 26th July, 1947, Part I, page 238.
Bhimtal	
<i>District Tehri-Garhwal</i>	Not. No. R. C.-504-Geo-51-49, dated 14th April, 1950, published in U. P. <i>Gazette</i> , dated 22nd April, 1950, Part I, page 238.
Narendranagar	
Tehri	
Devaprayag	
Uttarkashi	

Areas exempted.—The following areas have been exempted from the operation of the Act, by notification of the Government :—

- | | |
|---------------------------|--|
| (1) Pihani Municipality. | Not. No. 1080-R.COM 720-49 dated 5th June, 1951, published in U. P. <i>Gazette</i> , dated 9th June, 1951, Part I, page 454. |
| (2) Bilgram Municipality. | |
| (3) Sandi Notified Area. | |
| (4) Mallawan Town Area. | |
| (5) Palikhas Town Area. | |
| (6) Beniganj Town Area. | |
| (7) Madhoganj Town Area. | |

Act applicable to partially-Areas.—The provisions of some of the sections have been made applicable to the Town Areas noted below :—

Sections	Town Areas	Notifications
2, 3, 3-A, 4, 5, 6, 7-B, 8, 11, 12, 14, 15 and 16	Robertsganj, Town Area in District Mirzapur	Not. No. R. C. 1386-Geo. 61-49, dated 9th July, 1949, published in U. P. Gazette, dated 16th July, 1949, Part I, page 528.
7-B	"	Will not be applicable to Robertsganj Town Area vide Not. No. 2291 XIX-X C (R C)-61-49, dated 3rd October, 1951, published in U. P. Gazette, dated 13th October, 1951, Part I, page 810.
2, 3, 3-A, 4, 5, 6, 7-B, 8, 11, 12, 14, 15 and 16	Moth in District Jhansi	Not. No. R. C. 818 Geo. 61-49, dated 13th May, 1949, published in U. P. Gazette, dated 21st May, 1949, Part I, page 387.
"	Seohara in District Bijnor	Not. No. RC.-980-Geo. 61-49, dated 30th June, 1949, published in U. P. Gazette, dated 4th July, 1949, Part I, page 512.
"	Sirsaganj and area situated within two miles of it in District Mainpuri	Not. No. R. C. 1079-Geo. 61-49, dated 30th June, 1949, published in U. P. Gazette, dated 4th July, 1949, Part I, page 512.
"	Fatehpur and Dildarnagar in District Ghazipur	Not. No. R. C. 2308-Geo. 61-49, dated 20th December, 1950, published in U. P. Gazette, dated 30th December, 1950, Part I, page 987.
3, 14, 15	Doiwala Town in District Dehra Dun	Not. No. R. C. 702-RCOM-61-49 dated 31st May, 1951, published in U. P. Gazette, dated 9th June, 1951.

Cantonment Area Exempted.—Act III of 1947, as originally passed, was published in the U. P. Gazette dated March 1, 1947 and applied to Cantonment areas also. This was amended by the Amending Act XLIV of 1948 and excluded the Cantonment area from the operation of the Act. In 1949, the U. P. (Temporary) Control of Rent and Eviction (Amendment), Ordinance V of 1949 came into force on September 26, 1949, and introduced Section 2 (2-A) which applied the Act to the Cantonment areas also. Subsequently, a bill known as the U. P. (Temporary) Control of Rent and Eviction (Amendment) Bill, 1950 was passed by the State Legislature, but the President did not assent to it and it never became law. The Ordinance No. V of 1949 also lapsed after the expiry of six months with the result that the Act as amended by Act XLIV of 1948 had no application to Cantonment areas. It, however, applies to areas within two miles of the Municipal or Notified areas. This may include Cantonment areas, but the Act will have no application to Cantonment areas as under Item No. 3 of list I of the Seventh Schedule of the Constitution of India. "The regulation of house accommodation" in Cantonment areas is within the exclusive jurisdiction of the Central Government, and the State Legislature cannot make any laws in that respect.

Expiry of the Act and its effect.—Under Section 1 (4) the Act shall cease to have effect on the expiry of September 30, 1968, except as respects to things done or omitted to be done before the expiration thereof and Section 6 of the United Provinces General Clauses Act, 1904 shall apply upon the expiry of the Act, as if it had been repealed by an United Provinces Act. In the words of Their Lordships of the Calcutta High Court "the effect of the repeal of a statute in the absence of any Saving clause is, that it has to be considered as if the Statute so repealed never existed¹⁵". When Section 6 of the General Clauses Act repeals any enactment hitherto made or thereafter to be made, then, unless a different intention appears, the repeal shall not :—

- (a) revive anything not in force or existing at the time at which the repeal takes effect ; or

15. *Digamber Paul Ghosh v. Tafasuddi Ijarada*, 1934 Cal 80=60 C 1938.

- (b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder ; or
- (c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed ; or
- (d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed ; or
- (e) affect any remedy or any investigation or legal proceeding commenced before the repealing Act shall have come into operation in respect of any such privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid ; and any such remedy may be enforced, and any such investigation or legal proceeding may be concluded, and any such penalty, forfeiture or punishment imposed as if the repealing Act had not been passed.

The effect of Section 6 of Act I, 1904 is that when any United Provinces Act repeals any enactment, unless a different intention appears, the repeal shall not affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder. It, however, does not apply to Ordinances expiring automatically¹⁶, nor when the question is of jurisdiction¹⁷, or revive anything not in force or existing at the time at which the repeal takes effect¹⁸. A vested right under the old Act which has been repealed is saved¹⁹. Pending appeals are to be decided according to the old Act²⁰, and offences committed under a repealed Act should be tried according to that Act²¹.

Amending Act—If retrospective :—The Amending Act is not retrospective, but the scheme of the Act is such that it not only affects future suits, but also pending proceedings and decrees already passed, and in that view of the matter, the amendment, which comes into force during the pendency of a suit, which includes an appeal, have to be taken into consideration²².

1-A. Saving.—Nothing in this Act shall apply to any building or part of a building which was under erection or was constructed on or after January, 1, 1951.

Legislative Changes.—The new Section 1-A was added to the principal Act by U. P. Act XVII of 1951.

Under Erection —meaning.—It means under construction, and not complete. Ordinarily, it would mean that the building is still to be erected for completion, but it does not exclude the idea of completion so far as plastering, flooring, fixing of doors and windows etc. are concerned. It, however, connotes that the building must be substantially complete for the purposes of letting it out^{22a}. A mere structural alteration is not construction within the meaning of the section²³.

2. Definitions.—In this Act :—

- (a) “Accommodation” means residential and non-residential accommodation in any building or part of a building and includes,
 - (i) gardens, grounds and out-houses, if any, appurtenant to such building or part of a building ;
 - (ii) any furniture supplied by the landlord for use in such building or part of a building ;
 - (iii) any fitting affixed to such building or part of a building for the more beneficial enjoyment thereof.

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| 16. 1 A W R 432 (F B).
17. 2 A W R 527.
18. <i>Official Receiver, Moradabad v. Haji Murtaza Ali</i> , 1832 A 441—54 A 616.
19. <i>Jageshwar Singh v. Ruja Bhagwan Baksh Singh</i> , 14 O C 10.
20. <i>Girwar Lal v. Kallan</i> , 1927 A 509. | 21. 1 Weir 781=7 M H C R 89.
<i>Raja Ram v. Madho Prasad</i> , 1954 A L J 195.
22a. <i>M. L. Das and Sons. v. Sampat-mull</i> , 1954 C 103.
23. <i>Madho Das Bhagwan Dass v. Subhogmal</i> 1950 Ajmere 34. |
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But does not include any accommodation used as a factory or for an industrial purposes where the business carried on in or upon the building is also leased out to the lessee by the same transaction.

- (aa) "Commissioner" includes an Additional Commissioner.
- (b) "Lease" includes a sub-lease ;
- (c) "Landlord" means a person to whom rent is payable by a tenant in respect of any accommodation and includes the agent, attorney, heir or assignee of such person ;
- (d) "District Magistrate" includes an officer authorised by the District Magistrate to perform any of his functions under this Act ;
- (e) "Municipal assessment" means the annual rental value assessed by the Municipal Board or Notified Area, as the case may be, in force on April 1, 1942, in respect of accommodation which was assessed on or before such date and the first assessment made after April 1, 1942, in respect of accommodation which was assessed for the first time after such date ;
- (f) "Reasonable annual rent" in the case of accommodation constructed before July 1, 1946, means
 - (1) if it is separately assessed to municipal assessment, its municipal assessment plus 25 per cent. thereon ;
 - (2) if it is a part only of the accommodation so assessed, the proportionate amount of municipal assessment of such accommodation plus 25 per cent. thereon ;
 - (3) if it is not assessed to municipal assessment.
 - (i) but was held by a tenant on rent between April 1, 1942 and June 30, 1946, fifteen times the rent for the one month nearest to and after April 1, 1942, and
 - (ii) if it was not so held on rent, the amount determined under Section 3-A and in the case of accommodation constructed on or after July 1, 1946, means the rent determined in accordance with Section 3-A ;
- (g) "Tenant" means the person by whom rent is, or but for a contract, express or implied, would be payable for any accommodation.
- (h) "Vacant" where used with reference to any accommodation, includes an accommodation about to fall vacant an intimation whereof has been sent by the tenant or the landlord to the District Magistrate.

Legislative Changes.—A new clause (aa) has been added by U. P. Act, XXIV of 1952. The clauses (a), (e) and (g) have been substituted and a new clause (h) has been added by U. P. Act XVI of 1954.

Analogous law :—See Section 2 of Assam Act 13 of 1949, Bihar Act III of 1947, C. P. and Berar Order, 1949, Delhi and Ajmere Act XIX of 1947, East Punjab Act III of 1949, Madras Act 25 of 1949, Orissa Act V of 1947, Travancore and Cochin Order, 1950, West Bengal Act 38 of 1948; Section 5 of Bombay Act 57 of 1947, and Section 3 of Rajasthan Act 17 of 1950.

Definition—Meaning and Effect.—Whenever any meaning either wide or more limited than its natural connotation is sought to be assigned to an expression occurring in a statute, it has to be defined, such meaning is known as "artificial meaning". The Legislature has, therefore, to be cautious to retain its

plain grammatical meaning, when placed in a particular context, its artificial meaning will produce repugnancy²⁴. It is well known that Legislature uses the word "means" where it wants to exhaust the significance of the term defined and the word "included" where it intends that while the term defined should retain its ordinary meaning, its scope should be widened by specific enumeration of certain matter which its ordinary meaning may or may not comprise so as to make the definition enumerative, but not exhaustive²⁵. The words "include" has an extending force and it does not limit the meaning of the term to the substance of the definition²⁶.

Definition and Interpretation.—Lexicons would only define an expression in terms of a decision given by a court of law and unless the decision was one given under the act in which the expression is used, it involves a dangerous method of interpretation²⁷. Where a definition is expressed in the present tense and without any qualification, the Court has to look at the Act as a whole and more particularly at the context in which the word occurs in order to ascertain the point of time to which the definition is referable²⁸. Little weight is to be attributed to an omission to the usual qualification, "unless there is something repugnant in the subject" or context to a definition in the statute because such words are to be implied in all statutes where the expressions which are interpreted by a definition clause are used in a number of sections with meanings sometimes of a wide and sometimes of an obviously limited character²⁹. It is not for the Court to ignore a statutory definition and proceed to try and extract the true meaning of an expression independently of it³⁰. Where a phrase has been first introduced and then defined, the definition *prima facie* must entirely determine the application of the phrase; but the definition must itself be interpreted before it is applied and interpreted in case of doubt, in a sense appropriate to the phrase defined and to the general purposes of the enactment³¹. Terms defined in the Act must be given meaning contained in the definition unless it is clear that they must be given different meaning³². Terms defined in the Act should be given the same meaning throughout the Act³³. The words of a remedial statute must be construed, so far as they reasonably admit so as to secure that the relief contemplated by the statute shall not be denied to the class intended to be relieved³⁴.

Section 2 (a)

Accommodation—Meaning.—"Accommodation" has been given a very wide meaning. It covers both residential and non-residential accommodation in any building or part of a building³⁵, and further includes gardens, grounds, and out-houses appertaining to such building or part of a building; it also includes furniture and fittings in the building. The "non-residential accommodation" would include shops, boarding houses, hotels, temporary hotels, garages, stables, boarding houses, and lodging flats, nursing home, club, cinemas, restaurants, advertising sites etc., etc. The key word in this definition is building which connotes a roofed

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| <p>24. <i>Mst. Surajbansi Kuar v. Larho Kuar</i>, 1945 Pat 90.</p> <p>25. <i>Province of Bengal v. Sm. Hingal Kumari</i>, 1946 Cal 217 (224)=50 Cal W N 184.</p> <p>26. <i>Strauses & Co. In re A I R 1937 Bom 15 (16); Fatch Chand v. Akimuddin Choudhri</i>, 1943 Cal 108.</p> <p>27. <i>Firm Karanji Narain v. Messrs. Volkart Bros.</i> 1946 Lah 116 (128)=I L R 1946 Lah 692 (F B).</p> <p>28. <i>Ganeshi Lal v. Shiam Lal</i> 1943 A 190 (191)=I L R 1943 A 502 (F B).</p> <p>29. <i>Md. Manjural Hague v. Bisheshwar Banerji</i>, 1943 C 361 (368, 369); <i>Kartich Chandra v. Harsha Mukhi Das</i>, 1945 C 345 (354, 356).</p> <p>30. <i>Nana Rao v. Arunachalam Chethiar</i>, 1949 Mad 385 (390)=</p> | <p>I L R 1940 M 526.</p> <p>21. <i>Cadija Unma v. Don Munis Appu</i>, 1939 P C 63 (65).</p> <p>32. <i>Official Liquidator v. Jugal Kishore</i>, 1939 A 1=I L R 1939 A 6.</p> <p>33. <i>Parsotam Das v. Official Liquidator, Electric Supply Co. Ltd.</i>, 1938 A 613 (615)=I L R 1938 A 957; <i>Hajipur Central Co-operative Union Ltd. v. Kamla Prasad</i>, 1937 Pat 531. See also <i>Narain Das v. Karachi Municipality</i>, 1933 Sind 258=147 I C 345.</p> <p>34. <i>Raghuraj Singh v. Hari Kishan Dass</i>, 1944 O W N 331 P C.</p> <p>35. <i>Narain Lal Bhargava v. Mai Ram Kali Devi</i>, 1950 A 398=1950 A L J 642; <i>Shri Kashoo Das v. Murtasa Ali Khan</i>, 1950 A 390.</p> |
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structure and hence any compound or enclosure, which is not appurtenant to any roofed structure cannot be considered to be accommodation within the meaning of the Act³⁶. A furnished cinema house is included within the definition of accommodation as it is a building for non-residential purposes³⁷. This view, however, is against the view taken by the Allahabad High Court in F. C. A. 94 of 1949 decided on 1st May, 1952³⁸. It, however, does not include any accommodation used as a factory or for an industrial purpose, where the business carried on in or upon the building is also leased out to the lessee by the same transaction.

In the expression residential and non-residential, the word "and" is disjunctive and not conjunctive and does not mean that the accommodation must be used both for residential and non-residential purposes³⁹. Whether a building is residential or non-residential can be determined only by the purposes of letting, which is the main test⁴⁰.

Building—Meaning.—The word "building" has not been defined anywhere in the Act. In Murray's Oxford Dictionary it is defined to mean : "that which is built, a structure, edifice : now a structure of the nature of a house built where it is to stand". In Webster's New International Dictionary the definition given is : "that which is built; spacing : (a) As now generally used, a fabric or edifice, framed or constructed, designed to stand more or less permanently, and covering a space of land, for use as a dwelling, storehouse, factory, shelter for beasts or some other useful purpose". It is manifest from the above that the true connotation of a building is some sort of a habitation, fit either for a human being or animal⁴¹. Section 2 (2) of the U. P. Municipalities Act defines "building" to mean a house, hut or other roofed structure for whatsoever purpose and of whatsoever material constructed and every part thereof, but should not include a tent or other such portable temporary shelter. According to this definition a Chabutra would not come within the definition of building unless it can be considered as a part of a building⁴², but a permanent Chabutra with a shed erected on it is a building and it is immaterial whether the roof is or is not of a permanent character like the Chabutra⁴³. A roof consisting of reed screen spread over bamboo poles cannot be a building. Shed made of straw and slanting on either side supported on four poles cannot invariably be considered to be a building, but what is ordinarily called a Chappar may be a building if its dimensions are sufficiently large⁴⁴. A wooden shed with a roof would be a building⁴⁵ and so also a cowshed⁴⁶.

Appurtenant—Meaning.—It means something which is adjunct to or an integral part of the building⁴⁷. Where land comprising of two small houses immediately adjoined the Abadi, one contained the remains of a house and the other some miscellaneous fruit trees, timber trees, and some castor-oil plants, it was held to be land appurtenant to a house⁴⁸.

Section 2 (b)

Lease—meaning.—The only definition that has been given in the Act is that "lease includes a sub-lease," but this definition has merely an extending force, and means that while the term "lease" may retain its ordinary meaning its scope should be widened, so as to include a sub-lease as well. The ordinary meanings of the term "lease" are given in Section 105 of the Transfer of Property Act, which defines it as follows :—

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| <p>36. <i>Chanda Lal v. Ram Kishan</i>, 1951 A W R 373 (H C). See <i>Abdul Aziz v. Kenkata Chalam Pikkai</i>, (1952) M L J 836.</p> <p>37. <i>Kali Prasad v. Jagdish Prasad</i>, 7 D L R (Cal) 70; <i>Balmukund Khatri v. Hari Narain</i>, 1949 Pat 31; <i>Irani v. Chedambaran Chattiar</i>, (1952) 2 M L J 221.</p> <p>38. <i>Israrul Hag v. Seth Shridhar Lal</i>.</p> <p>39. <i>Nirangan Lal Bhargava v. Ram Kali Devi</i>, 1950 A 396=1950 A L J 642.</p> <p>40. <i>T. Dalshnamoorthy v. Thulja Bai</i>, 1952 M 413 (F B).</p> | <p>41. <i>Sita Ram v. Kanchhed Mal</i>, 1948 A 414.</p> <p>42. <i>Brij Nandan Prasad v. Emperor</i>, 1945 A 222.</p> <p>43. <i>Munshi Lal v. Emperor</i>, 1933 A 657.</p> <p>44. <i>Bala Prasad v. Muzammil Husain</i>, 1934 A 190.</p> <p>45. <i>Mandu Mal v. Municipal Committee Simla</i>, 1925 L 252.</p> <p>46. <i>Corporation of Calcutta v. B. K. Bose</i>, 15 C W N 84.</p> <p>47. <i>Babu Lal v. Ram Prasad</i>, 1938 R D 885 (F B).</p> <p>48. <i>Ramji Bibi v. Chandi</i>, 17 R D 818.</p> |
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"A lease of immovable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity in consideration of a price paid or promised, or of money, a share of crops, service, or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer of such terms."

"The transferor is called lessor, the transferee is called the lessee, the price is called the premium and the money, share, service or other things to be so rendered is called the rent."

A lease is the outcome of the rightful separation of ownership and possession. Before the lease, the owner had the right to enjoy possession of the land, but by the lease, he excluded himself during the currency of the lease from that right. A lease therefore is not a mere contract, but it is a transfer of interest in land. It creates a right in *rem*⁴⁹.

The essential characteristic of a lease is that the subject of it is one which is occupied and enjoyed and the corpus of which does not in the nature of things and by reason of the user disappear⁵⁰.

Lease—Minority—Effect.—A lease to a minor is void as the lease imports a covenant by the minor to pay rent and other reciprocal obligations⁵¹. This was a case before the Amending Act of 1929 came into force. The present Section 107 of the Transfer of Property Act makes it clear that a lease to a minor must be void, because it is to be executed both by the lessor and the lessee. If the lease is granted by a minor it is void even if the deed is executed by the lessee⁵².

Different kinds of Leases.—Leases are of different kinds as noted below :—

(1) **Lease at the will of the lessee.**—There is a difference of opinion as to the nature of this lease. In *Bui Sona v. Hiragavi*⁵³ it was held to be a permanent and heritable lease. In other⁵⁴ it was held to be a lease for life while the Madras High Court⁵⁵ and the Allahabad High Court⁵⁶ have held it to be tenancy-at-will. The latter view appears to be correct, because a tenancy expressed to be at the will of lessee, is by implication of law, one at the will of the lessor also.

(2) **Tenancy-at-will.**—This has not been defined anywhere. *Principles of the Law of the Real Property* by Williams and Eastwood, (1933 Edition), page 105 gives a definition ;

"When a person lets to another to hold at the will of the lessor or the person letting, the lessee is called a tenant-at-will, and as he may be turned out, when his landlord pleases, so he may leave, when he likes."

To terminate a tenancy-at-will a notice is not necessary. It can be terminated by a simple demand for possession⁵⁷. The lessee can terminate it by simply communicating his intention to give up the lease and vacating the property⁵⁸. The English cases may be referred in order to determine the nature of the tenancy-at-will⁵⁹.

(3) **Tenancy-at-Sufferance.**—Where a tenant, after the determination of his tenancy continues in possession without any right to do so and without any permission from the lessor, he is known as a tenant-at-sufferance, i. e., one who came in by right and held over without right⁶⁰. His possession is, therefore, wrongful⁶¹,

- 49. *Anwar Ali v. Jamini Lal*, 1940 C 89=43 C W N 797.
- 50. *Girdhari v. Meghalal*, 45 C 87 (P.C.).
- 51. *Parmila Bali Das v. Jogeshwar*, 46 I C 670.
- 52. *Govinda Karup v. Chowakharan*, 59 M L J 941=129 I C 449=1931 M 147.
- 53. 1926 B 374.
- 54. *Sulaiman v. Asmad Isap*, 1877 B P J 177 and *Zimbler v. Abraham*, 1 K B 577.
- 55. *Manicka v. Cinnapai*, 36 M 557 (558).
- 56. *Khayali v. Husain Bux*, 8 A 198.
- 57. *Deo Nandan Prashai v. Megho Mahaton*, 34 C, 57; *Ramadhani*

- Gope v. C. V. Scott*, 1925 Pat 256 (257, 258); *Ram Kishen v. Sohila*, 1933 Pat 561 (562); *Bansidhar v. Ram Charan*, 1940 O W N 586=1940 Oudh 401.
- 58. *Des Raj v. Jaimal Singh*, 1920 L 217=57 I C 209.
- 59. *Chamberlain v. Farr*, 112 L JKB 206; *Dun thorne & Shore v. Wiggins*, 113 L J Ch. 85; *Francis Jackson Developments v. Stamp*, 2 All E R 601; *Turner v. Watts*, 97 L K J B 403.
- 60. *Kundan Lal v. Deep Chand*, 1933 A 756 (758).
- 61. *Ghulam Mohiuddin v. Dayabhai*, 1923 B 398=73 I C 442.

and he can be ejected without notice ⁶². He cannot, however, be dispossessed other than in due course of law ⁶³.

The difference between a tenancy-at-will, and a tenancy-at-sufferance is that in the one case the tenant holds by right and has an estate or term in the land, precarious though it may be, and the relationship of the lessor and the lessee subsists between the parties; in the other, the tenant holds wrongfully and against the will and permission of the landlord, and has no estate at all in the occupied premises. (*Addison's Law of Contract*, 10th Edition, P. 618.)

A tenancy-at-sufferance may be converted in a tenancy-at-will by virtue of Section 116 of the Transfer of Property Act.

(4) **Lease in perpetuity.**—Section 105 of Transfer of Property Act contemplates a lease in perpetuity. The question whether a lease is a permanent one or not is one of construction depending on the facts and circumstances of each case. It *Amar Krishna Narain Singh v. Nazir Hasan*⁶⁴ it was held that the words "perpetual" and "for ever" are words of flexible amplitude, and if the circumstances under which the instrument was made and the subsequent conduct of parties showed an intention with clearness and certainty that a heritable and transferable grant was made, then it was open to the court to give that meaning to these words.

A lease described "istimrari" is good only for the life-time of the lessee ⁶⁵. "Istimrari Mukarari" also does not convey an estate in inheritance ⁶⁶, although "Istimrari Mukarari Putta" may amount to a perpetual grant ⁶⁷. *Mouruni* tenures are permanent tenures ⁶⁸. The *Mukaldami* tenure in the Uttar Pradesh does not create any permanent or heritable interest in the lessee ⁶⁹.

The following circumstances may lead to an inference of permanency:—

- (a) A lease for building purposes, in the absence of any definite terms in the grant ⁷⁰.
- (b) Permanent structures with landlord's acquiescence, transfers and uniform rent are indicative of permanent tenancy ⁷¹.
- (c) A substantial premium is suggestive of permanent tenancy ⁷².
- (d) A lease providing that the tenant was at no time to be ejected from the land, but that after the expiry of nine years, a fresh settlement would be made and until it was made the conditions of *Kabuliat* were to remain in force—indicated a permanent tenancy ⁷³.
- (e) The unknown origin of tenancy, long and undisturbed possession by the tenant and his predecessors-in-title, the payment of the same rent for a long period; tenancy for residential or building purposes, the erection of *pucca* buildings, tenancy held by the same family, generation after generation, transfers of tenancy and their recognition by the landlord are even circumstances, the cumulative effect of which is to create a permanent tenancy ⁷⁴.

(5) **Lease with no period.**—If no period is fixed in a lease the presumption under Section 106, Transfer of Property Act, would apply ⁷⁵. It was held that a lease which is silent as to the duration of its terms would not be a lease within the meaning of Section 105, Transfer of Property Act ⁷⁶. By the Privy Council

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| 62. <i>Kundan Lal v. Deep Chand</i> , 1933 A 756. | Abdullah, 1936 A 385. |
| 63. <i>Rudrappa v. Nursingrao</i> , 29 B 213 (216). But see <i>Muthura Prasad v. Naju Khan</i> , 1921 P 463=80 I C 568. | 71. <i>Kumud v. Himanshu</i> , 1937 C 373; <i>Nabakumari v. Behari</i> , 3 I C 902 (P.C.); <i>Ram Duar v. Lachni Pd.</i> , 1941 A 51. |
| 64. 1939 O W N 825=14 Luck 723. | 72. <i>Ram Narain v. Chota-Nagpur Association</i> , 43 C 232. |
| 65. <i>Gaya v. Ramjiwan</i> 8 A 569. | 73. <i>Abdul Karim v. Abdul Rahman</i> , 13 I C 304. |
| 66. <i>Tulsi Prasad v. Narain</i> , 12 C 117 (P.C.). | 74. <i>Afzalunnisa v. Abdul Karim</i> , 46 I A 131; <i>Shukmara v. Nagendra-bala</i> , 1949 C 93. |
| 67. <i>Ram Narain v. Chota-Nagpur Banking Association</i> , 43 C 332. | 75. <i>Rajib v. Yaunus</i> , 1937 Nag 321; <i>Anwar Ali v. Jamini Lal</i> , 1940 Cal 81. See also <i>Jagdev Chandra v. Maqbul Ali</i> , 97 C 979; <i>Mohd. Asizul Bari v. Raziuddin</i> , 1939 C 423. |
| 68. <i>Giribala v. Kedar Nath</i> , 1929 C 454=56 C 180. | |
| 69. <i>Bhagwati v. Hanuman</i> , 23 A 67. | |
| 70. <i>Pramadanath v. Srigobind</i> , 32 C 648; <i>Hira Lal v. Secretary of State</i> 1931 B 436; <i>Kanhaiya Lal v.</i> | |

a rule of construction has been laid down as follows⁷⁷: "If a grant be made to a man for an indefinite period, it enures generally speaking for his life-time and passes no interest to his heirs, unless there are some words showing an intention to grant a hereditary interest. The rule of construction does not apply if the term for which the grant is made is fixed or can be definitely ascertained."

(6) **Periodic Leases.**—A lease from year to year or from month to month may be called a periodic lease. Whether a lease is from year to year or from month to month is a question of construction in each case⁷⁸. The mere fact that the rent is fixed on an annual basis will not necessarily show that the lease is from year to year⁷⁹. In the absence of a contract, local usage or law to the contrary a lease for an agricultural or manufacturing purpose will be deemed to be one from year to year and a lease for any other purpose will be deemed to be one from month to month in view of the provisions of Section 106, Transfer of Property Act.

(7) **Lease with Security.**—The lessee on payment of Rs. 4,000, by way of security without interest, obtained a lease of certain lands for a term of years with a provision for return of the deposit of Rs. 4,000 after the expiry of the term, it was held that the transaction amounted to a lease and not to a mortgage.⁸⁰

(8) **Lease by Prescription.**—A trespasser in possession under a claim of tenancy in respect of the land can acquire a right of tenancy in the land by prescription⁸¹. If a trespasser has been in possession claiming a permanent tenancy, he will be entitled, at the end of the statutory period to a permanent tenancy by prescription⁸². Possession under a transfer purporting to be a transfer of permanent tenure may culminate in a permanent tenancy by prescription⁸³.

(9) **Zar-i-Peshgi Lease**—This bears a close affinity to a usufructuary mortgage from which it is not easy to distinguish. The answer to the question, whether a transaction amounts to a mere Zar-i-Peshgi lease or to a usufructuary mortgage is often attended with considerable difficulty. Both in the case of Zar-i-Peshgi lease and in the case of a usufructuary mortgage, the person in whose favour the document is executed is entitled to possession. Similarly, in both cases there is an advance money to the execution of the deed. But in the case of usufructuary mortgage there is a statutory liability for accounting cast upon the mortgagee by Section 73 (g) of the Transfer of Property Act. In the case of Zar-i-Peshgi lease, however, normally there is no such liability on the lessee. Further, in the case of Zar-i-Peshgi lease pure and simple, the lessee is not given any security for the amount advanced by him, whereas in the case of a usufructuary mortgage there is a transfer of interest in the property mortgaged in favour of the mortgagee. It is clear from Section 105, Transfer of Property Act, that in the case of a lease there is a mere transfer of a right to enjoy the property leased, and no interest in the same is transferred in favour of the lessee. Again in the case of lease there is no right of redemption vested in the lessor, whereas such a right exists in a mortgage⁸⁴. It is a lease for a sum of money advanced⁸⁵.

Lease and Easement.—The lessee is entitled to possession to the exclusion of others, while in the case of an easement, the owner retains his possession, and the grantee gets merely a right to the limited use of the land⁸⁶.

Lease and Licence.—The difference between a lease and a licence is that in the case of licence there is no interest in immovable property transferred to the licensee, while in the case of a lease, there is a transfer or carving out of such interest in favour of the person in whose favour the lease is granted. One chief consideration is whether there is any right of exclusive possession given. If the effect of the document is to give the holder an exclusive right of occupation of

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| 77. <i>Lekhraj Roy v. Kanhyati, Shign</i> 14 A 223. | 83. <i>Ujir Ali v. Shahdhai</i> , 1922 C 185. |
| 78. <i>Venkatesham Cheti v. Audian</i> , 3 Mad 358. | 84. <i>Ramman Lal v. Raghunath, Shanker</i> , 1941 O W N 388 (H C); <i>Nidha Shah v. Murlidhar</i> , 25 A 115 (P C); <i>Vashoji Kaveji v. Cameji Bomaji</i> , 20 B 252 (F B); <i>Balkishen Dass v. Jaswant Singh</i> , 22 A 149 (P C). |
| 79. <i>Ramdhani Gope v. Scott</i> , 1932 Pat 258. | 85. <i>Bengal Indigo Co. v. Raghuber</i> , 24 C 272 (P C). |
| 80. <i>Sital Prasad v. Dildar Ali</i> , 33 I C 408. | 86. <i>Haran Chandra v. Shyama Charan</i> , 1940 C 447. |
| 81. <i>Maidin Saiba v. Nagapa</i> , 7 B 96; <i>Kalyani Devi v. Udai Kumar</i> , 1922 C 345=49 C 257. | |
| 82. <i>Chidambara Shivaparkasa v. Veerama Reddi</i> , 49 I A 186. | |

the land, it will be demise of the land⁸⁷. This matter has been more fully discussed by Allahabad High Court and Patna High Court⁸⁸.

A, whose house was destroyed by enemy action, had been allowed by the owner of a cottage to live there rent-free for the duration of war, was held to be a licensee⁸⁹. The defendants were allowed to occupy a bungalow on the understanding, that they would defray the out-goings, it was held that there was no tenancy but merely a licence⁹⁰. Occupation of a furnished house during tenant's absence was also held to be licence⁹¹.

Section 2 (c)

Landlord.—has been defined in Section 2 (c) of the Act. Mr. Justice Acton has given a definition. "The relation of landlord and tenant in its ordinary legal significance arises whenever one party confers on another the right of exclusive possession of premises, e. g., of a dwelling-house, for a time which is either subject to a definite limit originally as in the case of a lease for a term of years, or which, though originally indefinite, can be made subject to a definite limit by either party, as in the case of a tenancy, from year to year, or of a quarterly, monthly or weekly tenancy⁹². This relation is created by contract, to which there is usually, though not necessarily, incident a right on the part of the landlord to receive from the tenant payment for the use of the premises in the shape of rent. The word 'Landlord' does not mean the lord of the soil, but the person between whom and the tenant the relation of landlord and tenant exists⁹³. The relation of a landlord and tenant is, of course, fully established only when the tenant has entered on the premises let. If that has happened pursuant to a contract of the kind indicated the parties to such contract are accurately described as the landlord and the tenant.

The definition given in the Act not only includes the person to whom rent is payable, but also his agent, attorney, heir and assignee. A receiver appointed by court is landlord⁹⁴ & the executor or administrator of a deceased landlord⁹⁵. The words "to whom rent is payable" are very significant, and would mean the owner of an accommodation entitled in law to receive the rent when it is let out on rent, and it would not be correct to say that the owner of any accommodation cannot be deemed to be landlord unless it has been let out previously⁹⁶. It may include one claiming to be landlord⁹⁷.

Rights of Assignee.—Assignee of the lessor has not been defined in the Act. The rights of the assignee are given in Section 109 of the Transfer of Property Act. The assignment of lessor's right is commonly known as the assignment of the reversion. On an assignment of the reversion, the assignee succeeds to the rights and liabilities of the lessor in respect of covenants running with the land. The assignee takes the benefits of the lessor's covenants e. g., (1) to pay rent⁹⁸. The assignee of the lessor has against the lessee all the rights that the lessor had and can enforce not only covenants but conditions⁹⁹. He can recover rent due subsequent to the assignment¹. But he cannot sue for arrears of rent before his assignment², nor can he sue on breaches of covenant committed before the assignment³. The lessor, however, cannot transfer his obligation, but if the lessee so elects, he may be subject to all the liabilities of the lessor. If the lessee does make his election it would be final. He cannot, thereafter, turn round and

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| <p>87. <i>Acting Secretary, Board of Revenue v. Agent, South Indian Railway Co</i> 1925 Mad 434.</p> <p>88. <i>In re, Burmah Shell</i>, 1933 All 735 and <i>Bengal and North Western Railway v. Janki Prasad</i>, 1936 Pat 362</p> <p>89. <i>Booker v. Palmer</i>, 2 A E R 674. See also <i>Gee v. Hazleton</i> (1932) 1 K B 179.</p> <p>90. <i>Herbert v. Gore</i>, (The Estates Gazette, July 20, 1946).</p> <p>91. <i>Moss (E) v. Brown</i>, 2 All E R 557, C. A.</p> <p>92. <i>Oakley v. Wilson</i>, 97 L J K B at page 785=2 K B 279.</p> <p>93. <i>Churchward v. Ford</i>, 2 H. and N 450.</p> <p>94. <i>Cox v. Harper</i>, (1910) 1 Ch 480=</p> | <p>79 L J (Ch) 307.</p> <p>95. <i>Palgrave v. Windham</i>, (1719) 1 Str 212.</p> <p>96. <i>Puran Chand v. Rex</i>, 1951 A 628=1951 A W R 149 (H. C.)=52 Cr L J 896.</p> <p>97. <i>Puuthia Velappril Ajusamma v. Chowkaram Puthia Purajil Bachchi Keioi</i>, 1950 M 61.</p> <p>98. <i>Stenvenson v. Lambard</i>, (1802) 2 East. 575.</p> <p>99. <i>Kannyan Badavan v. Alikutti</i>, 42 M 603=51 I C 286.</p> <p>1. <i>Prabhu Ram v. Tek Chand</i>, 1 Lah 241.</p> <p>2. <i>Sharp v. Key</i>, (1841) 8 M & W 379.</p> <p>3. <i>Martyn v. Williams</i> (1876) 1 H & N 817</p> |
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charge the original lessor in respect of his liabilities⁴; if only a part of the premises have been transferred the rent can be apportioned.

Agent—meaning.—Agent has been defined in Section 182 of the Indian Contract Act : “An agent is a person employed to do any act for another or to represent another in dealings with third persons. The authority of an agent may be expressed when it is given by words spoken or written. An authority is said to be implied when it is to be inferred from the circumstances of the case, and things spoken or written or the ordinary course of dealing, may be accounted circumstances of the case”. (Sections 186 and 187, Indian Contract Act).

Attorney.—The relation between a client and an attorney is that of a principal and agent⁵. An attorney is entitled in the exercise of his discretion to enter into a compromise, if he does so in a reasonable, and skilful and *bona fide* manner, provided that his client has given him no express directions to the contrary⁶.

Rent—meaning.—“Rent” has not been defined in this Act. A definition can be had from Section 105, Transfer of Property Act. It is a consideration for the transfer of a right to enjoy immovable property for a certain time or in perpetuity in the shape of money, a share of crops, service, or any other thing of value to be rendered periodically or on specified occasions to the lessor by the lessee. It is a consideration for the transfer of a right to enjoy immovable property. The term “rent” is not equivalent to “money rent”⁷. The section expressly provides that the rent may be in the form of money, a share of crops or any other thing of value. It may be partly in one of these forms and partly in another⁸, and unless the consideration takes one of these forms it will not be rent⁹. The three necessary incidents of rent are : (1) It must be certain or capable of being rendered certain¹⁰. (2) It must be reserved out of something to which the lessor can have recourse to distrain. Therefore, it cannot be reserved out of incorporeal hereditaments¹¹. (3) It must be reserved to the lessor and not to a third person.

Rent in Money.—This has to be distinguished from licence fee. Rent is a consideration for the transfer on an interest in immovable property, but licence does not involve any such transfer¹². The *Thaka* of a right to fish and to collect produce from *Nazul* land is not a lease and therefore money paid under it is not rent¹³. Money under a collateral agreement in consideration of grant of lease would not be rent¹⁴. A lease granted in consideration of the lessee buying certain goods or accepting certain services from the lessor is not rent¹⁵. Where a cash rent is fixed and it is provided that certain fixed quantities of named commodities must also be supplied by the tenant to the landlord every year, it was held that such commodities formed part of rent¹⁶.

Rent in Kind.—Where a lease fixes a money rent, but provides that a certain quantity of grain or other commodities may be delivered in lieu of it, the lessor is entitled to recover only the stipulated sum of money¹⁷. Whether the sum mentioned in the deed of lease or the market value is recoverable depends on the construction of the deed and the following cases may serve as guides¹⁸.

Rent by Service.—Services of a family doctor in lieu of rent¹⁹; and of a servant, who occupies land rent-free by way of remuneration are instances of rent

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| <p>4. <i>Iswara v- Ramappa</i>, 1934 M 658.</p> <p>5. <i>Mathews v. Munster</i>, (1887) 20 Q B D 141, 142.</p> <p>6. <i>Fray v. Voules</i>, 117 R R 483; <i>Jagannath Dass v. Ramdas</i>, (1870) 7 B H C O 79.</p> <p>7. <i>Tafazzul Ahmad v. Masalat Khan</i>, 1934 C 747.</p> <p>8. <i>Gopal Singh v. Jhakri Rai</i>, 12 C 37.</p> <p>9. <i>Sita Ram v. Sarju Prasad</i>, 25 O C 39.</p> <p>10. <i>Daniel v. Gracie</i>, 6 Q B 145 (1844).</p> <p>11. <i>Buzard v. Capel</i>, 8 B & C 141.</p> <p>12. <i>Ram Lal v. Badel Khan</i>, 1928 Oudh 99=3 Luck 282.</p> <p>13. <i>Sadig Husain v. Secretary of Estate</i>, 1914 Oudh 272.</p> <p>14. <i>Subramanian Chettiar v. Aruna-</i></p> | <p><i>chalam Chettiar</i>, 29 I A 138.</p> <p>15. <i>In re, U. P. Electric Supply Co.</i>, 1934 C 803=61 C 556.</p> <p>16. <i>Rangi Lal v. Jassa</i>, 38 A 286 (F B).</p> <p>17. <i>Bipro Charan v. Suchand Roy</i>, 8 I C 945.</p> <p>18. <i>Jitendranath v. Jaku</i>, 1922 Patna 4=66 I C 780; <i>Baneshwar v. Umesh Chandra</i>, 37 C 626; <i>M. hit Krishna v. Mahendra Nath</i>, 1911 C 468; <i>Official Trustee of Bengal v. Benode Behari</i>, 1925 C 114=51 C 943; <i>Suroj Bandhu v. Moti Lal</i>, 1928 C 112; <i>Bangshiram v. Prasannamoji Debi</i>, 55 C 574.</p> <p>19. <i>Jyotish Chandra v. Ramanath</i>, 32 C 243.</p> |
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by service. Lease for service being rendered twelve days in the year is valid²⁰.

In the case of coal mines the rent is a royalty on the amount of minerals extracted, payable at fixed intervals of time.²¹

Interest on rent, if rent —Interest agreed to be paid on arrears of rent is not rent²².

Premium—meaning.—It is the same as *Nazrana*; it means the price paid or promised for the grant of a lease. Price means money only²³, and will include not only the actual cash, but also money due²⁴.

The distinctions between rent and premium are: (1) The premium is a lump sum, though it may not be paid in cash at once but only promised or may be payable in instalments²⁵, while rent, if it is payable in money, is a periodical payment²⁶. (2) Rent can be in money, in kind or in the form of service, but premium can only be in the form of money.

Section 2 (d)

District Magistrate.—District Magistrate has been defined in Section 10 of the Criminal Procedure Code:—

“(1) In every district outside the presidency towns the Local Government shall appoint a Magistrate of the first class, who shall be called the District Magistrate.

“(2) The Local Government may appoint any Magistrate of the first class to be an Additional District Magistrate and such Additional Magistrate shall have all or any of the powers of a District Magistrate under this Code or under any other law for the time being in force as the Local Government may direct.

“(3) For the purposes of Section 192, sub-section (1), Section 407, sub-section (2) and Section 523, sub-sections (2) and (3) such Additional Magistrates shall be deemed to be subordinate to the District Magistrate.”

The definition given in this Act includes an officer authorised by the District Magistrate to perform any of the functions under this Act, in the definition of a District Magistrate. A Rent Control Officer would, therefore, be treated as a District Magistrate. It would not include an Additional District Magistrate²⁷.

Delegation of powers—Fact.—The District Magistrate has been empowered to authorize any officer to perform any of his functions under the Act. The order of delegation must be clear in terms and must be made in favour of an officer, who is subordinate to the District Magistrate²⁸. If the officer to whom powers have been delegated commits an error, it can be corrected by the District Magistrate²⁹.

Section 2 (e)

Annual Rental Value.—Annual rental value has been defined in Section 140 of the Municipalities Act II of 1916. The distinction in the Act of 1916 between buildings erected for letting purposes and buildings not erected for letting has been replaced by a distinction between (a) building of a type not usually let and (b) buildings of a type which could ordinarily be let. In the latter case under sub-section 1 (b), the gross rental value for which such building, exclusive of furniture or machinery therein, or such part as is actually let, should be accepted for the purposes of assessment, unless in the opinion of the Board such rent is

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| 20. <i>Radhu Hari v. Narendra Nath</i> , 1929 C 224=50 C 862. | 1934 C 803. |
| 21. <i>Manindra Chandra Nandy v. Secretary of State</i> 5 C L J 148. | 22. <i>Jagan Nath v. Behari</i> , 1921 N 137. |
| 22. <i>Koyla Chandra v. Tarak Nath</i> , 25 C 571; and <i>Rai Charan v. Komand Mohan</i> , 2 C W N 297. | 23. <i>Shri Kedar Nath v. Mool Chand</i> , 195 A W R 421=1953 A 62. |
| 23. <i>Arumugham v. Subramanian</i> , 1937 M 882. | 24. <i>Ram Chandra v. Mohan Lal Tewari</i> , 1954 A L J 223. |
| 24. <i>Nidha Shah v. Murlidhar</i> , 30 I A 54; <i>Gulalhai v. Bhagwan</i> , 1928 B 377. | 25. <i>Jang Bahadur v. District Magistrate, Banaras</i> , 1954 A L J 225. See also <i>B. N. Seth v. Girja Shanker</i> , 1952 A 819 and <i>S. Abdul Hamid v. Fatima Begam</i> , 1955 A 36 (F. B.). |
| 25. <i>In re, U. P. Electric Supply Co.</i> | |

below the fair market letting value. "Annual value" was held to mean "Annual letting value"³⁰. The annual value of the land and buildings shall be deemed to be the gross annual rent at which they may reasonably be expected to be let from month to month or from year to year³¹.

Assessed by the Municipal Board or Notified Area—The assessment by the Municipal Board is made under Sections 110 to 151 of the U. P. Municipalities Act. Notified Area is also governed by these provisions if the Local Government so notifies under Section 338 of the Municipalities Act.

Municipal Assessment—meaning.—it means in case of accommodation assessed on or before April 1, 1942, the assessment in force on such date, while in case of accommodation assessed after that date, the first assessment made. Accommodation as defined in this Act includes also any furniture supplied by the landlord. Under Section 14¹ of the Municipalities Act no assessment is made on the annual rent of the furniture. Therefore, "Municipal Assessment" would mean the assessment made on the building or land only.

Section 2 (f)

Reasonable Annual Rent.—A new sub-section (f) has been substituted by Act 44 of 1948 in place of the original in Act 111 of 1947. Sub clauses (1) and (2) are practically the same as in the original Act, but the addition of sub clause (3) makes a departure from the original definition and sets at rest many controversial points, arising out in cases where no Municipal Assessment has been made. Such cases were of three kinds: (1) Newly constructed houses. (2) Houses leased out on rent prior to 1946 and (3) Houses though in existence prior to 1946 but never leased out. The sub-section makes provisions for determination of the reasonable amount of rent in all such cases in the following manner:

(a) Accommodation constructed before July 1, 1946, complete Accommodation

Municipal Assessment plus 25 per cent i.e. the assessment in force on April 1, 1947 or in its absence the first assessment after that date plus 25 per cent of the said assessment.

(b) Part of such Accommodation.

Proportionate municipal assessment, plus 25 per cent of such proportion.

(c) Accommodation leased out between 1-4-42 and 30-6-46, and not assessed to Municipal assessment.

Fifteen times of one month's rent nearest to 1-4-1942.

Accommodations constructed after July 1, 1946—Effect.—In case of accommodations constructed after July 1, 1946, the reasonable annual rent has to be determined under Section 3-A of the Act. Unless there is a determination of annual reasonable rent, a suit under Section 5(4) would not be maintainable.

Apportionment of Rent—Method.—There is nothing in the Act to show how the proportionate amount of the Municipal assessment has to be determined. Apportionment is made under Sections 34 and 37 of the Transfer of Property Act. Section 36 refers to apportionment by time, while Section 37 refers to apportionment by estate. The latter section may be availed of in apportioning the assessment. It provides for the apportionment of the obligation in proportion to the value of the property. In determining the value the size, accessibility and aspect of the premises occupied by the tenant may be taken into consideration³². The Municipal assessment should be apportioned in rates of rents realized from various portions of the building and not according to the areas of the various accommodation into which the building is divided³³.

Section 2 (g)

Tenant—Meaning.—Tenant means (1) a person by whom rent is payable for any accommodation, (2) a person by whom but for contract, express or implied, rent would be payable for any accommodation. The definition makes it clear that in order that a person be a tenant of another, what is essential is that but

- 30. *Nando Lal Bose v. The Co-operative for the Town of Calcutta*, 11 C 275.
- 31. *Vadlamudai Brahmayya v. Guntur Municipal Council*, 1926 M 1007.

- 32. *Bainbridge v. Congdon* (1925) 2 K B 264=133 L T 268.
- 33. *Shri Kedar Nath v. Mool Chand* 1952 A W R 421=1953 A 62.

for contract he is liable to pay rent. It does not mean the tenant and the sub-tenant but one of the two as the context demands, and in a suit by the landlord the meaning is tenant-in-chief³⁴. "Persons" under the U. P. General Clauses Act I of 1904, Section 4 (33) includes, any company or association or body of individuals, whether incorporated or not. Express and implied contracts have been defined in Section 9 of the Indian Contract Act. In so far as the proposal or acceptance of any promise is made in words, the promise is said to be express. In so far as such proposal or acceptance is made otherwise than in words, the promise is said to be implied. Payment or the liability to pay rent for any accommodation is the chief factor which determines tenancy.

A lease may be granted to several persons who may take as tenants in common or as joint tenants. In the case of joint tenants the interest of each person passes upon death to the survivors. In the case of tenants in common the interest of a deceased lessee passes at his death to his representatives. Thus in a lease to a partnership the surviving partners are trustees for the representatives of the deceased partner in respect of the latter's share. But if two or more persons hold a demise under one lease, then in the absence of a clear provision to the contrary, the entire body of tenants constitutes a single tenant *qua* the landlord³⁵.

Joint Tenancy or Tenancy in common—Meaning.—The rule of English law is to presume that a transfer to a plurality of persons creates a joint tenancy with right of survivorship, unless there are words of severance³⁶. This principle has been recognized in Section 106 of the Indian Succession Act, 1925. A joint tenancy has been recognised in a gift by will of a Native Christian³⁷ and a Parsi³⁸. The Hindu Law is just the opposite. The principle of joint tenancy appears to be unknown to Hindu Law, except in case of coparcenary between members of an undivided family³⁹. Even if the grantees are members of a coparcenary they will take as tenants in common,⁴⁰ unless a contrary intention appears from the grant⁴¹.

Tenant-at-sufferance—Meaning and Status.—A tenancy by sufferance is merely a fiction to avoid continuance in possession operating as a trespass. It cannot be created by contract and arises by implication of Law e. g. when a person who has been in possession under a lawful title continues in possession after that title has determined, without the consent of the person entitled. Therefore, a tenant holding over after the expiration of his term is a tenant-at-sufferance⁴². He can be sued in ejectment by the lessor without there being any notice to quit or even a demand of possession before suit⁴³. A landlord, however, cannot evict a tenant *proprio motu*⁴⁴. If he is dispossessed otherwise than in due course of Law, he may recover possession under Section 9 of the Specific Relief Act⁴⁵. The tenancy-at-sufferance does not create the relationship of landlord and tenant⁴⁶. Even where a lease provides for damage by way of enhanced rent till the date of vacating the property if the lessee should continuo in possession after the expiration of the term, there would be no subsisting relationship of landlord and tenant between the parties after such expiration⁴⁷.

Tenant-at-will.—A tenant-at-sufferance may become a tenant-at-will, if the lessor instead of ejecting the tenant allows him to continuo in possession, either by accepting rent or otherwise expressing his assent to the continuance of the tenancy. This tacit renovation of the tenancy is enacted in Section 116, Transfer of Property Act⁴⁸, and the tenure of such tenant shall be presumed, to be either

- 34. *Ram Bharosey v. Ajeeet Kumar*, 1952 A L J 280=1952 A 806.
- 35. *Mati Lal v. Kartar Singh* 11 L 427=1950 L 515 (F. B.); *William White v. Tyndal*, 13 A C 263.
- 36. *Morley v. Bird* (1798) Ves 628.
- 37. *Arakal v. Domingo* 34 M 80.
- 38. *Novroji v. Perozbai*, 23 B 80.
- 39. *Jogesh Narain v. Ram Chand Dutt*, 23 I A 37.
- 40. *Kishori Dubain v. Mundra Dubain* 33 A 665; *Ram Piari v. Krishna*, 43 A 600.
- 41. *Yethirajulu v. Mukunthu*, 28 M 363; *Narpad Singh v. Mahomed*

- 42. *Ali*, 11 C I (P.C)
- 43. *Mozam Sheikh v. Annanda Prasad*, 1942 C 311=20 I C 600.
- 44. *Kundan Lal v. Deep Chand*, 1933 A 756=1933 A L J 682.
- 45. *Kundan Lal v. Deep Chand*, 1933 A 756.
- 46. *Ghulam Mohammad v. Emperor*, 13 A 531.
- 47. *Kirat Singh v. Bhai Kalu*, 1934 L 129.
- 48. *Ram Chandra Singh v. Bhikambar Singh*, 37 C 674.
- 49. *Solaiman v. Jatindranath*, 57 C 588.

from year to year or from month to month as specified in Section 106⁴⁹. An agricultural tenant, who holds over is a tenant from year to year,⁵⁰ and so a tenant who holds for manufacturing purposes⁵¹. The lease of premises for purposes other than agricultural or manufacture holds over on monthly rent⁵².

The assent of the lessor, may be either express or implied. It may be inferred from the acceptance of rent,⁵³ or a demand of rent⁵⁴, or a suit for rent⁵⁵. These circumstances however, merely raise a presumption which can be rebutted. Thus the lessor may show that he accepted the rent in ignorance of the termination of tenancy⁵⁶.

A tenant holding over as a tenant from month to month is entitled to notice to quit, of fifteen days expiring with the end of each month of the tenancy and the day on which each month expires is calculated according to the rule in Section 110 of the Transfer of Property Act⁵⁷.

A tenant-at-will shall be governed by the provisions of the U. P. Control of Rent and Eviction Act⁵⁸.

Bankrupt tenant.—On the bankruptcy of the tenant of a house or other premises his interest therein, by virtue of the Bankruptcy Act, 1914, is divested from him and is vested in the trustee in bankruptcy, who may sell or disclaim, but by the disclaims, nothing reverts in the tenant. A bankrupt tenant has, therefore, no protection against ejection⁵⁹. See Section 111 (g), T. P. Act for Indian Law on the point.

Sub-Tenant.—Under Section 108 (j) a lessee has a right to transfer by way of a sub-lease the whole or any part of his interest in the property. The lessee shall not by reason only of such transfer, cease to be subject to any of the liabilities attaching to the lease. This right of sub-lease is, however, denied to the lessee of an estate under the management of a Court of Wards. A reference to Section 3 (c) of Act 111 of 1947 would show that if a lessee has sublet the whole or any portion of the accommodation without the permission of the landlord, the lessee would become liable to ejection. This means that now a sub-lease to be valid must be with the permission of the lessor, and a sub-tenant would mean a sub-lessee with the permission of the landlord. But by transferring his interest the lessee does not absolve himself from his liabilities as a lessee,⁶⁰ as there is no privity of contract or estate between the original lessor and the sub-lessee⁶¹. No doubt by transfer, he acquires the same right against the sub-lessee; as his lessor against him, but his relation with the lessor does not cease on that account⁶². However, if the lessor consents to treat the assignee on the footing of the original lessee, there would be a privity of contract created between them and the original lessee would then be no longer liable⁶³. In any other case the lessee continues liable to the lessor upon his covenant, who may, however, enforce them not only against the lessee upon his contract, but also against the assignee upon the privity of estate though he can have execution against one only⁶⁴.

Rights and Liabilities of Tenant.—These are determined by (1) contract, (2) Local usage, (3) Section 108, Transfer of Property Act and (4) the different provisions of the U. P. Control of Rent and Eviction Act. An express covenant in the deed of lease overrides the covenant implied by Section 108, Transfer of Property Act⁶⁵. The local usage must be so well known and acquiesced in that it may reasonably be presumed to have been an ingredient imported by the parties in

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| 49. <i>Trilokya Nath v. Sarat Chandra</i> , 32 C 113. | 58. <i>Chamberlain Farr</i> , 112 L J K B 206; <i>Feeley v. Hill</i> , 92 L J K B 974=1930 LT 76. But See <i>Ram Kishan v. Bili Solika</i> , 1933 Pat. 561. |
| 50. <i>Mohd. Ayejuddin v. Prodyat Kuar</i> , 48 C 359. | 59. <i>Reeves v. Davies</i> 1911 L J K B 675 =(1921) L T 351. |
| 51. <i>Jacks & Co. v. Joosab</i> , 48 B 38=1924 B 115. | 60. <i>Girendra v. Ganga Narain</i> , I L R 1938 A 282. |
| 52. <i>Meghji v. Dayalji</i> , 48 B 341=1924 B 322. | 61. <i>Nawab Ali v. Mohd. Ramzan</i> , 1944 N 141. |
| 53. <i>Har Nath v. Mohar Singh</i> , 1931 L 672. | 62. <i>Manmathanath v. Nalina Khasa Rai</i> 1925 C 423. |
| 54. <i>Dougal v. McCarthy</i> , (1892) 1 Q B 736. | 63. <i>Surapati v. Ram Narain</i> , 501 I A 155. |
| 55. <i>Balaji v. Ramchandra</i> , 27 B 282. | 64. <i>Kunhanjen v. Anjelu</i> , 17 M 296. |
| 56. <i>Deod. Lord v. Crago</i> , (1848) 6 C 90. | 65. <i>Clayton v. Leek</i> , (1889) 41 Ch D 103. |
| 57. <i>Benoy Krishna Das v. Salsiccionis</i> , 59 I A 414=1934 C 837. | |

in their contract ⁶⁶. It need not be immemorial or universal if it is the prevalent usage in the neighbourhood where the land lies ⁶⁷.

Liabilities of a Tenant —They must be enumerated as under :—

- (a) The lessee is bound to disclose to the lessor any fact as to the nature or extent of the interest which the lessee is about to take of which the lessee is, and the lessor is not aware, and which materially increases the value of such interest—Section 108 (k), T. P. Act. There is no proper forfeiture of the lease in case of breach of this duty. The only remedy left is to sue for compensation.
- (b) The lessee is bound to pay or render, at the proper time and place, the premium or rent to the lessor or his agent in this behalf—Section 108 (e), T. P. Act. If he has wilfully failed to make payment of any arrears of rent within one month of the service upon him of a notice of demand from the landlord he may be ejected—Section 3 (a) of Act III of 1947. It is the duty of the lessee to seek out the lessor for the payment of rent ⁶⁸.
- (c) The lessee is bound to keep, and at the termination of the lease to restore the property in as good a condition as it was at the time when he was put in possession, subject only to the changes caused by reasonable wear and tear or irresistible force—Section 108 (m), T. P. Act.
- (d) The lessee must allow the lessor and his agents, at all reasonable time during the term, to enter upon the property and inspect the condition thereof and give or leave notice of any defect in such condition; and when such defect has been caused by any act or default on the part of the lessee, his servants or agents, he is bound to make good within three months after such notice has been given or left—Section 108 (m), T. P. Act.
- (e) The lessee must not wilfully cause or permit to be caused substantial damage to the accommodation—Section 3 (b) of Act III of 1947. The breach of this covenant would entail ejection.
- (f) The lessee must not, without the permission of the landlord, make or permit to be made any such construction as, in the opinion of the court materially alters the accommodation or is likely substantially to diminish its value—Section 3 (c) of Act III of 1947. Breach entails ejection.
- (g) If the lessee becomes aware of any proceedings to recover the property or any part thereof, or of any encroachment made upon, or any interference with, the lessor's rights concerning such property, he is bound to give, with reasonable diligence, notice thereof to the lessor—Section 108 (n), T. P. Act.
- (h) The lessee must not use or permit another to use, the property for a purpose other than that for which it was leased, or fell or sell timber, pull down or damage buildings belonging to the lessor, or work mines or quarries not open when the lease was granted, or commit any other act which is destructive or permanently injurious thereto—Section 108 (o), T. P. Act.
- (i) The lessee must not create a nuisance or do any act which is inconsistent with the purpose for which he was admitted to the tenancy of the accommodation, or which is likely to affect adversely and substantially the landlord's interest therein—Section 3 (d) of Act III of 1947. Breach entails ejection.
- (j) The lessee must not, without the lessor's consent, erect on the property any permanent structure except for agricultural purposes—Section 108 (p), T. P. Act.
- (k) The lessee is bound to put the lessor into possession of the property on the determination of the lease—Section 108 (q), T. P. Act.

66. *Juggumohan v. Manik Chand*, 7 M I A 263, 282.
67. *Legh v. Howitt* (1803) 4 East 154.

68. *Manung Pyu*, 1940 Rang 84 (88)
See also Section 7-C of the Act.

(l) The lessee shall within seven days of his vacating the accommodation in his occupation give intimation thereof in writing to the District Magistrate or such officer as the District Magistrate may appoint in this behalf—Section 7 of Act III of 1947.

Rights of Tenant—are enumerated below :—

- (a) Accession made to the property leased shall be deemed to be comprised in the lease—Section 108 (d), T. P. Act.
- (b) The lessee can avoid the lease, if any material part of the property is wholly destroyed or rendered substantially and permanently unfit for the purposes for which it was let, provided that the injury has not been occasioned by the wrongful act or default of the lessee—Section 108 (e), T. P. Act.
- (c) The lessee may make the repairs, and deduct the expenses with interest from the rent or otherwise recover it, if the lessor neglects to make, within a reasonable time after notice, any repairs which he is bound to make to the property—Section 108 (f), T. P. Act. In the absence of local custom, or any stipulation to the contrary, a landlord is under no obligation to repair.⁶⁹
- (d) The lessee may make payments, and deduct them with interest from the rent, or otherwise recover them, if the lessor neglects to make any payment which he is bound to make, and which if not made by him are recoverable from the lessee or against the property—Section 108 (g), T. P. Act. The payments to which the lessor is ordinarily liable are the land-tax, cesses, ground-rent and other exchequer dues.
- (e) The lessee may even after the determination of the lease remove, at any time whilst he is in possession of the property leased, but not afterwards all things which he has attached to the earth: Provided he leaves the property in the state in which he received it—Section 108 (h). The term “attached to the earth” is defined in Section 3, T. P. Act, and means : (1) rooted in the earth as in the case of trees and shrubs, (2) imbedded in the earth, as in the case of walls or buildings or (3), attached to what is so imbedded for the permanent beneficial enjoyment of that to which it is attached.
- (f) The lessee or his legal representative is entitled to all the crops planted or sown by the lessee, and growing on the property when a lease of uncertain duration determines by any means, except the fault of the lessee, and to free ingress and egress to gather or carry them—Section 108 (i), T. P. Act. Leases of uncertain duration are the leases referred to in Section 111 (b), (c) and (h). A tenancy determined by forfeiture is determined by lessee's fault, for although forfeiture is the election of the lessor, yet it is the fault of the lessee which has led to the determination of the lease.⁷⁰
- (g) The lessee, other than the lessee of an estate under the management of a Court of Wards, may transfer absolutely or by way of mortgage or sub-lease the whole or any part of his interest in property—Section 108 (j), T. P. Act. But in view of Section 3 (e), Act III of 1947 a sub-lease must be with the permission of the lessor.

Notice to eject—Effect.—A tenancy can be terminated by a notice to quit under Section 106 in view of the provisions of Section 111 (h) of the Transfer of Property Act, but this would not mean that in such cases the provisions of the Act III of 1947 would have no application.⁷¹

Aflux of time—Effect—A lease determines by afflux of time limited thereby—Section 111 (a) of the Transfer of Property Act. This means that a period must have been fixed in the lease i. e. it must be a lease for a fixed period. It has no application to leases from year to year or from month to month. In case

69. *Lakmichand v. Ratanbai*, 51 B. 274—See also Section 7-E of the Act.

70. *Devis v. Eyton*, (1830) 7 Beng 154.
71. *Gour Mohan Roy v. Sailendra Nath Saha Choudhury*, 1950 A 152.

of leases for a fixed period, the tenant is liable to be ejected without recourse to the provisions of Section 3 of the Act⁷².

Contract against Act—Effect.—This law relating to contract of rent and eviction has been enacted for the benefit of a tenant. He may be forced by circumstances to contract against the provisions of the Act. This contract would not, however, be valid. It would be against public policy and the spirit of the Act. A tenant cannot be permitted to contract the rights and privileges conferred on him by the Act⁷³.

Section 2 (h)

Vacant—Meaning.—The meaning of word “vacant” has been discussed under Section 7. The definition given in this sub-section merely *includes* an accommodation which is about to fall vacant, notice whereof is given to the District Magistrate by the landlord or the tenant.

3. Restrictions on eviction.—(1) Subject to any order passed under sub-section (3) no suit shall, without the permission of the District Magistrate, be filed in any civil court against a tenant for his eviction from any accommodation, except on one or more of the following grounds :—

- (a) That the tenant is in arrears of rent for more than three months and has failed to pay the same to the landlord within one month of the service upon him of a notice of demand;
- (b) that the tenant has wilfully caused or permitted to be caused substantial damage to the accommodation ;
- (c) that the tenant has, without the permission in writing of the landlord, made or permitted to be made any such construction as, in the opinion of the court, has materially altered the accommodation or is likely substantially to diminish its value ;
- (d) that the tenant has created a nuisance or has done any act which is inconsistent with the purpose for which he was admitted to the tenancy of the accommodation or which is likely to affect adversely and substantially the landlords' interest therein ;
- (e) that the tenant has on or after the 1st day of October, 1946, sub-let the whole or any portion of the accommodation without the permission of the landlord ;
- (f) that the tenant has renounced his character as such or denied the title of the landlord and the latter has not waived his right or condoned the conduct of the tenant ;
- (g) that the tenant was allowed to occupy the accommodation as a part of his contract of employment under the landlord and his employment has been determined.

Explanation.—For the purposes of sub-section (e) lodging a person in a hotel or a lodging house shall not be deemed to be sub-letting.

This provision was added by Section 10 of the U. P. (Temporary) Control of Rent and Eviction (Amendment) Act, 1948.

72. *Shamshuddin v. Mohanlal*, 1951 A L J 722; *Abbulak Ram v. Uma Shanker*, 1950 A L J 817; *Radhey Lal v. Met. Lareti*, 1952

A L J 30. 73. *Mst. George Eakseted v. The Chief Judge, Small Causes Court, Madras*, 1951 M. 222.

(2) Where any application has been made to the District Magistrate for permission to sue a tenant for eviction from any accommodation and the District Magistrate grants or refuses to grant the permission, the party aggrieved by his order may, within 30 days from the date on which the order is communicated to him, apply to the Commissioner to revise the order.

(3) The Commissioner shall hear the application made under sub-section (2), as far as may be, within six weeks from the date of making it, and he may, if he is not satisfied as to the correctness, legality or propriety of the order passed by the District Magistrate or as to the regularity of proceedings held before him alter or reverse his order, or make such other order as may be just and proper.

(4) The order of the Commissioner under sub-section (3) shall, subject to any order passed by the State Government under Section 7-F be final.

[For the removal of doubts it is hereby declared that under Section 3 of the Principal Act no permission of the District Magistrate is or be deemed to ever have been necessary for filing a suit for evicting against a tenant on any of grounds mentioned in clauses (a) to (f) of the said section.]

Analogous Law.—See Section 6 of the Assam Urban Areas Rent Control Act 13 of 1949, Section 11 of the Bihar Buildings (Lease, Rent and Eviction) Control Act III of 1947, Section 12 of the Bombay Rents, Hotel and Lodging House Rates Control Act 57 of 1947, Section 13 of the Central Provinces and Berar Ordor, 1949, East Punjab Urban Rent Restrictions Act III of 1949, The Rajasthan Premises (Control of Rent and Eviction) Act, 1950; Section 9 of the Delhi and Ajmer-Merwara Rent Control Act, XIX of 1917, and The Travancore-Cochin Buildings (Lease and Rent) Control Order, 1950; Section 7 of the Madras Buildings (Lease and Rent Control) Act, 25 of 1949; Section 5 of The Orissa House Rent Control Act XI of 1951 and Section 11 of West Bengal Premises Rent Control Act 38 of 1948.

Interpretation.—There is nothing in clauses (a) to (f) to indicate that the action of the tenant therein mentioned should have any reference to the decree of eviction already passed.⁷⁴

Scope of the section.—This section restricts the grounds on which a tenant can be ejected from any accommodation. These grounds are enumerated in clauses (a) to (j) of the section. If the lessor wants to eject a tenant on any other ground than those mentioned in the above clauses he has to obtain the permission of the District Magistrate⁷⁵. The words "to file a suit" in a case where the decree has already been passed mean "to institute proceedings for execution by ejection of the tenant", and in the case of a suit pending on the date when the Act came into force mean "to continue the suit"⁷⁶. Without such permission no suit for ejection shall be maintainable. In the case noted at the footnote⁷⁷, it was held "that the plain and natural construction of the section was that no suit could be filed in the Civil Court by the landlord for the eviction of a tenant unless he had, previous to the filing of the suit, obtained permission to do so from the District Magistrate. When no suit was filed, however, the landlord was to substantiate one or more of the grounds given in the section in order to obtain a decree for eviction of the tenant". This decision created a doubt whether the permission of the District Magistrate was

74. *J. W. Peters v. Ram Narain Mehrotra* 1949 A 537=1949 A W R 27 (H. C.)

75. *Ghanashiam Das Bhagat v. Ghulab Chand*, 1951 A L J 616=1951 A W R 124 (H C)=1949 O 11 1948 O W N 237.

76. *Sunder Lal v. Muhammad Ishq*, 1953 A L J 555; *Mohan Lal v. Lala Kunwar Sen*, 1954 A L J 160.

77. *Bhagat Singh Bugga Co. v. Mrs. Gangotri Devi*, 1949 O 11=1948 O W N 237=1948 A W R (C C) 114.

necessary even in cases falling under clauses (a) to (g) of the section. It was the view of some subordinate courts that this case laid down an absolute rule that no suit for eviction could be filed against a tenant without the permission of the District Magistrate. This doubt has been removed by Section 10 of the U. P. Control of Rent and Eviction (Amendment) Act of 1948 which lays down that no permission of the District Magistrate is or be deemed to ever have been necessary for filing a suit for eviction against a tenant on any of the grounds mentioned in clauses (a) to (g) of the said section. It was, however, in a subsequent decision held, that the permission of the District Magistrate to sue did not absolve the landlord from his liability to prove any of the grounds mentioned in Section 3 (a) to (g)⁷⁸. This view was not consistent with previous decisions⁷⁹, and was dissented⁸⁰.

Permission—Effect.—The effect of the grant of permission is to make available to the landlord all the rights that he had under the Transfer of Property Act⁸¹. In granting permission the District Magistrate does not act as a court. His order is more in the nature of an executive order and the principles of *res judicata* have no application. A refusal to grant permission is no bar to a second application for permission. It is a matter in which the exercise of his Judgment, provided it is not made arbitrarily or unreasonably, and, provided further that it is not a fraud upon the Act, cannot be challenged in court of law⁸². It is, however, open to the authority empowered to grant sanction to revoke it⁸³. The Civil Court cannot go into the question whether the District Magistrate was justified in granting permission⁸⁴. When a suit for ejectment is dismissed on the ground of the invalidity of notice, a fresh suit can be filed and it is not necessary to obtain fresh permission unless it is shown that since the granting of the permission circumstances have changed which might have changed the attitude of the District Magistrate who might have refused permission at that stage⁸⁵. The District Magistrate in an administrative capacity, must exercise his discretion reasonably and without any corrupt motive. He is the sole judge to decide in his discretion and it cannot be challenged by a Civil Court⁸⁶. He has also power to revoke the permission without hearing any party⁸⁷. The permission must be antecedent and not subsequent to the institution of the suit⁸⁸. It does not become invalid merely because the landlord agrees under a subsequent order from the District Magistrate to accommodate in a portion of the house, a third person. The permission could be deemed to have been amended by the subsequent order but not wholly set aside⁸⁹. If a suit for ejectment is dismissed on the ground that the permission obtained during the pendency of the suit was not effective, a fresh suit can be brought on the basis of the same permission⁹⁰.

- 78. *Nan v Zamindar*, 1954 A L J 235.
- 79. *Raj Narain v. Sita Ram*, 1952 A L J 2=1952 A 584; 1951 A L J 616=1952 A 624; *Messrs Karam Chand Thappar & Bros. Ltd. v. Dr. Vijay Anand*, 1952 A L J 274=1952 A 689; *R. N. Seth v. Girja Shankar Srivastva*, 1952 A 819; *Munnu Lal v. Chakroadar Hans*, 1952 A L J 272=1952 A 859.
- 80. *Smt Narain Devi v. Hakim Mohd. Amin*, 1954 A L J 291=1955 A 259.
- 81. *Durga Prasad v. Rama Kant*, 1951 A L J 285=1951 A W R 121 (H C); *Chotey Lal v. Sheo Shanker*, 1950 A L J 455; *Karamchand Thappar v. Dr. Vijay Anand*, 1952 A L J 274; *Budh Ram v. Pearcey Lal*, 1952 A L J 536.
- 82. *Babu Lal v. Ganga Saran*, 1952 A 48=1951 A L J 746; *Jehangir v. Saith Indermal* 6 D L R (Hyd) 8. ; *C. D. Hans v. Munnu Lal*, 1951 A L J 479=1951 A W R 482 (H C)=1952 A 432; *Manno Lal v. Chakradhar Hans*, 1952 A L J 278.
- 83. *Chotey Lal v. Sheo Shankar*, 1950 A L J 455.
- 84. *Pahlad Das v. Ganga Saran*, 1952 A 32.
- 85. *Karan Chand Thappar v. Vijay Anand*, 1952 A L J 274.
- 86. *Manna Lal v. Chakradhar Hans*, 1952 A L J 278=1952 A W R. 297 (H C).
- 87. *Moti Lal v. Mahalir Prasad*, 1951 A W R 263 (H C); *Horilal Varaney v. Pt. Amar Nath*, 1951 A W R 294 (H C). But see *T. Gupta Chudhry v. Mammathnath*, 1951 A L J 702; *Devi Prasad v. Janki Prasad*, 1953 A 732.
- 88. *The New Victoria Mills Co. Kanpur v. Jiwani Lal Tirbhawan Das Modi*, 1951 A 714=1951 A L J 446=1951 A W R 443 (H C).
- 89. *Debi Prasad v. Janki Prasad*, 1953 A 732.

Permission—Revision.—The order of the District Magistrate granting or refusing permission is revisable under Section 3 (2). The order passed in Revision would be final unless the State Government varies it under Section 7-F.

Permission—Procedure—The Act or the Rules framed thereunder do not lay down any procedure that may be followed by District Magistrate in granting permission⁹¹. It however follows from the wordings of the section that there should be an application in writing and the order of the District Magistrate should also be in writing, otherwise it would not be possible for a Court before which a revision lies to decide whether the order was correct, legal or proper. The District Magistrate has unfettered discretion to grant permission, but it must be exercised in accordance with rules of natural justice⁹².

Permission—Power.—The Act does not confer expressly the power to grant permission, but it is there by necessary implication⁹³.

Notice under Section 106, T. P. Act—if necessary.—Section 3 of Act III of 1947 merely lays down the grounds on which a right to evict a tenant can be based, but does not dispense with the procedure laid down by Section 105, Transfer of Property Act. A notice to quit is a necessary prelude to the legal determination of a tenancy⁹⁴. The object of the notice is to prevent the landlord from turning out the tenant at any moment at his option. But, obviously, there is no necessity of notice where the parties have entered into a different contract or a different course is sanctioned by local law or usage.

Notice when not necessary—A notice to quit under Section 106, T. P. Act is not necessary in the following cases:—

(1) The only leases recognised by section 105 are leases for a certain time, periodical leases and leases in perpetuity. Where therefore the status of a person does not fall under any of these heads he cannot be a lessee and hence he cannot insist upon a notice to quit⁹⁵.

(2) A tenant-at-sufferance is not entitled to any notice⁹⁶. Section 106 does not apply to the case of a lessee for a fixed term when the term has expired⁹⁷. On the expiry of the period the tenant is only a tenant-at-sufferance⁹⁸.

(3) A tenant-at-will is also not entitled to a notice to quit⁹⁹.

(4) A licensee is not entitled to any notice¹.

(5) A service tenant on failure to perform the service becomes a mere trespasser, and no notice to quit is necessary before ejection².

(6) Where a lease is for a fixed period, it is determined under Section III (a) by the afflux of time limited by the lease, and notice must be presumed by implication, as given when it was executed; therefore, no notice under Section 106, T. P. Act is required for the termination of the lease³.

(7) A sub-lessee is not entitled to a notice before ejection after the surrender by the original lessee⁴.

(8) A tenant expressly agreeing to give up possession on a certain fixed

91. *Kirpa Shanker v. Banwari Lal*, 1952 A 414=6 D L R (A) 326.

92. *Abdul Hanif v. Smt. Fatima Begam*, 1:55 A 36 (F B).

93. *Seth Ghansham Das Bhagat v. Ghulab Chand*, 1951 A W R :24 (H C).

94. *Ram Swarup v. Smt. Gayethri*, 1952 A W R 290 (H C); *Ghasi Ram v. Choudhry Mitra Sen*, 1952 A L J 727=1953 A 218.

95. *Ma Gyi v. Maung Tet*, 1934 R 291.

96. *Ch. Bansidhar v. Ram Charan and another*, 1940 Oudh 401=1940 O W N 586.

97. *Bishen Sarup v. M. Abdul Samad*, 1931 A 649.

98. *Kundan Lal v. Deep Chand*, 1933

A 756.

99. *Ramdhun Gope v. Scott*, 1925 P 256; *Ram Kishan Pande v. Bibi Soliha*, 1933 P 561; *Abdul Razak v. Seth Nand Lal*, I L R 1940 N 269.

1. *Athakuttis v. Govinda*, 16 M 97.

2. *Wair Noinan v. Ram Prasad*, 59 I C 893.

3. *Fasihus Zaman v. Anwar*, 1932 A L J 126=1932 A 314; *Goku Chand v. Shib Charan*, 9 A L J 574; *Bishen Sarup v. Abdul Samad*, 1931 A 649=1931 A L J 666; *Dewar Khand v. Secretary of State I. L. R.* 1939 B. 320.

4. *Shyam Lal v. Bachchu Lal*, 11 A L J 981.

date, is not entitled to a formal notice to quit⁶, as no notice is necessary where it is waived by the parties by a contract to the contrary⁶.

(9) Where a lease provides that the landlord may at any time resume possession of the land on payment of full compensation to the lessee for the building he may have erected thereon, such a provision is a contract to the contrary, and no notice to quit is necessary⁷.

(10) Where a tenant holds under an unregistered deed when it is compulsorily registerable, he is merely a tenant-at-will and a mere demand for possession is sufficient and no notice is necessary⁸.

(11) Where a tenant repudiates the title of the landlord, he is not entitled to any notice under Section 106, T. P. Act, although the landlord cannot bring a suit for ejectment unless he gives a notice under Section III (g) T. P. Act of his intention to determine the tenancy⁹.

Permission—Waiver.—When a plaintiff accepts rent due from the defendant before he utilizes the privilege obtained by him under the permission of the Town Rationing Officer on the basis that rents were in arrears, the privilege is waived, because when he came to court it could not be maintained that the defendants were in arrears¹⁰. This appears to be a case under the unamended Act. No permission is needed to eject a tenant on the basis of arrears of rent. The fact that a second notice to quit is given when the first notice is found defective or is waived does not require a fresh permission by the District Magistrate¹¹.

Permission—Delegation of powers.—The District Magistrate can delegate his powers under this section to the Town Rationing Officer. After delegation the permission of Town Rationing Officer will be the permission of the District Magistrate¹². The powers delegated by a particular individual in his capacity as a District Magistrate shall continue and shall be deemed to have been passed by his successor-in-office as well. They shall subsist until they are revoked¹³. It is open to the District Magistrate to cancel the permission¹⁴.

Restrictions—if ultra vires.—The restrictions placed by the Act on the exercise of the fundamental rights cannot be described as "unreasonable" in view of temporary nature of the Act. It cannot be declared void under Article 13 of the Constitution of India on the ground that it contravenes the fundamental rights of the landlord under Article 19 (f) of the Constitution¹⁵. This section does not offend against the rules of delegated legislation. By enacting this section the legislature has not abdicated itself and has not exceeded the permissible limits in allowing the District Magistrate to grant permission to the landlords to file suit for ejectment in civil courts¹⁶. The provisions of permission under Section 3 do not infringe Article 14 of the Constitution of India and are not discriminatory¹⁷.

Requisites of a valid notice—Their lordships of the Privy Council have laid down: "that notices to quit, though not strictly accurate or consistent in statements embodied in them may still be good and effective in law; the test of their sufficiency is not what they would mean to a stranger ignorant of all the facts and circumstances touching the holding to which they purport to refer, but what they would mean to tenants presumably conversant with all those

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| <ol style="list-style-type: none"> 5. <i>Dina Singh v. Jamal Singh</i>, 78 I.C. 446=1925 Nag. 48. 6. <i>Moosa Katty v. Thekka</i>, 1928 M 687; <i>Khada Baksh v. Abid Husain</i>, 12 O.C. 279=31 C. 873; <i>Mukat Singh v. Misra Paras Ram</i> 1924 A 726. 7. <i>Monindra v. Radha Prasanna</i>, 47 I.C. 19 (Cal.). 8. <i>Janki v. Kushaiya</i>, 1936 Oudh 102=159 I.C. 316; <i>Gur Prasad v. Hanraj</i>, 1946 O. 144. 9. <i>Anandamoyi v. Lakshmi Chandra</i>, 33 C. 339; <i>Haidri Begum v. Nathu</i>, 17 A. 45. 10. <i>Beti Kuar v. Banarsi Babu</i>, 1949 A 610=1949 A.L.J. 132=1949 A.W.R. 132 (H.C.). | <ol style="list-style-type: none"> 11. <i>L. Pahlad Das v. Ganga Saran</i>, 1952 A 32; <i>Chotey v. Sheo Shankar</i>, 1950 A.L.J. 455. 12. <i>Chotey Lal v. Sheo Shankar</i>, 1950 A.L.J. 455. 13. <i>Madan Lal and other v. Kali Prasad</i>, 1950 A. 109=1950 A.L.J. 150=1950 A.W.R. 437 (H.C.). 14. <i>S. Abdul Hamid v. Fatmi Begum</i> 1955 A 36 (F.B.). 15. <i>Ram Krishna Dhiani v. Radhavunu and others</i>, 1952 A.W.R. 139. 16. <i>Ghanashiam Das Bhagat v. Ghulab Chand</i>, 1951 A.L.J. 616=1951 A.W.R. 124 (H.C.). 17. <i>Karam Chand Thappar v. Dr. Vijay Anand</i>, 1952 A.L.J. 274. |
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facts and circumstances; and further they are to be construed, not with a desire to find faults in them which would render them defective, but to be construed *ut res magis varlet quam pereat*¹⁸. Subject to this rule the following may be said to be the requisites of a valid notice:—

(1) It must be clear and unambiguous intimation of the party giving the notice that the lease is to terminate¹⁹.

(2) It must determine the tenancy as a whole and not piece-meal²⁰. Hence a notice to quit with reference to a portion of the accommodation is bad²¹.

(3) It must designate the date on which the tenant is to vacate. Section 106, T. P. Act., requires a notice of six months in the case of yearly tenancy and a notice of fifteen days (now thirty days) in the case of a monthly tenancy. To terminate a tenancy the notice must be of fifteen clear days (now thirty days) or six clear months, according as the tenancy may be a monthly or a yearly one²².

(4) It must be in writing signed by or on behalf of the person giving it. A notice to quit must be signed by the lessor or his agent. The expression "Lessor" includes any person who would be entitled to the possession of the property on the termination of the lease²³. In case of co-lessors it must be signed by all. One co-lessor cannot give a notice even for his own share²⁴. This principle would not apply where (1) one co-sharer has been acting as a manager on behalf of other co-sharers²⁵, (2) the manager of a Joint Hindu family²⁶, (3) the tenant has dealt with one co-owner as the sole owner being estopped from denying his title²⁷, (4) tenants-at-sufferance²⁸. Where the lessor has assigned his interest in the property to another, the latter can give a notice to quit²⁹.

(5) It must be given to the lessee, his agent, or to the person in whom the lease-hold interest may have vested. Where it is vested in joint tenants it must be given to all of them³⁰. But proof of service on one joint tenant will be *Prima facie* evidence of service on all³¹. If a lessee dies leaving a number of heirs, all must be served³².

(6) It must be served (1) by post or (2) by delivery or tender to the addressee personally, (3) by delivery or tender to one of his family or servants at his residence or (4) by affixing it to a conspicuous part of the demised property. The last method can be adopted only when service by tender or delivery as prescribed by the section is not practicable³³. Sending by post means sending to the tenant's proper address³⁴; it must be sent to the tenant's place of residence, not to his Gadi or place of business³⁵. If the letter containing the notice is properly addressed, is registered at the post office and left in the custody of the postal authorities, it must be presumed under Section 114, Evidence Act that the letter reached the addressee³⁶. Refusal to take notice sent by registered post means

- 18. *Harihar Banerjee v. Ramashi Roy*, 45 I A 222.
- 19. *Bradley v. Atkinson*, 7 A 899 (FB).
- 20. *Durga Charou v. Pandub*, 33 C HJ 518; *Ram Karic v. Ganesh Chander*, 64 I C 550; *Bhimram v. Hura Soondery*, 33 C L J 515.
- 21. *Girdhuri Lal v. Purendu Narain*, 1939 C 291; *Harihar Banerji v. Ramshashi Roy*, 46 C 458=45 I A 222.
- 22. *Subodini v. Durga Charan*, 28 C 118.
- 23. *Manikkum Pillai v. Ratnaswami Nadar*, 1919 M 1186=43 I C 210.
- 24. *Ghulam Mohiuddin v. Khairan*, 31 C 786; *Priyanath Naik v. Promotha Nath*, 1920 C 513=57 I C 895.
- 25. *Devji Arjun v. Bhoja Vaija*, 1935 B 219.
- 26. *Muharram Ali v. Bansilal*, 1919 L 304.
- 27. *Tapurak Husain v. Gopi Narain*, 7 C L J 257; *Appa Rao v. Prati-patti Ramaya*, 29 M 29.
- 28. *Mangan Lal v. Bhudar Parshotam*, 1927 B 192.
- 29. *Parbhu Ram v. Tekchand*, 1 Lah. 241.
- 30. *Harihar Bannerji v. Ranashashi Roy*, 45 IA 222; *Bijay Chand Mehtab v. Kali Prasanna*, 1925 C 752.
- 31. *Bodardoja v. Ajijuddiu*, 1929 C 561.
- 32. *Anwar Ali v. Jamini Lal Roy*, 1940 C 89.
- 33. *Deo Nandan v. Maghu Mathen*, 34 C 57.
- 34. *Prahladari v. Commissioner for the Port of Calcutta*, 1938 PC 11.
- 35. *Gobinda v. Dwarka*, 19 C W N 489.
- 36. *Girish v. Kishore*, 23 C W N 319; *Bachchu Lal v. Lachman*, 1938 A 388.

service ³⁷. The publication of a notice in a newspaper does not amount to service of a notice ³⁸.

Sub-Lessee bound by notice—A notice, if valid, not only terminates the rights of the original lessee, but any lease, which the lessee may have made. A decree for ejectment is binding not only upon the lessee, but also upon his sub-tenants. They are liable to be evicted in execution of the decree under O. 21, R. 35, C. P. C. and it is not necessary to proceed under O. 21, R. 97, C. P. C ³⁹. There is no need to obtain permission for the ejectment of a sub-tenant ⁴⁰.

Contract against Act—Effect—It is a very controversial question, whether the landlord and the tenant can enter into a contract, which is against the provisions of the Act. The view of the Allahabad High Court is that there is nothing in the Act to prevent the tenant from entering into such a contract, ⁴¹ as the Act was passed for the benefit of tenants and it is open to them to forego the protection given under the Act and to agree to vacate the premises on a fixed date ⁴². The Madras High Court once held that the parties were competent to enter into a contract against the statute, ⁴³ but in a subsequent decision they dissent from this view and hold that the tenant could not curtail his rights and contract against the statute ⁴⁴. The Assam High Court has held the same view as the Allahabad High Court ⁴⁵. The Bombay High Court has however taken a contrary view ⁴⁶.

Section 3 (1) (a)

Legal Changes—Effect—This sub-section has been considerably amended by the Amending Act XVII of 1954. The original sub-section was as follows:

"That the tenant has wilfully failed to make payment to the landlord of any arrears of rent within one month of the service upon him of a notice of demand from the landlord".

In the amended sub-section the word "wilfully" has been deleted and it has been provided that if the tenant is in arrears for more than three months and on getting a demand does not pay it within a month he is liable to be ejected. This amended sub-section however would apply after 30th September, 1954 when the Amending Act came into force, but suits filed prior to the date shall still be governed by the old sub-section and it would be necessary to find if there was "wilful" default.

Wilfully failed—Meaning—"Wilful" means "intentional or deliberate" ⁴⁷ and the words "wilfully failed" used in this sub-section would mean not an unintentional failure or a failure by inadvertence but a deliberate failure, when the mind has been brought into play and a man has after taking the facts into consideration, refused to make the payment ⁴⁸. Where not only does a tenant fail to pay the rent on the due dates but further wrongly alleges that the rent has been paid, when in fact it was not paid, he commits wilful default in payment of arrears of rent ⁴⁹. Generally the word "wilful" as used in courts of law, implies nothing blamable, but merely that the person of whose action or default the expression is used is a free agent, and that what has been done arises from the spontaneous action of his will. It amounts to nothing more than this, that he knows, what he is doing, and intends to do what he is doing and is free agent.

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| 37. <i>Jogendra v. Dawarka Nath</i> , 15 C 481; <i>Vaman v. Kharaderao</i> , 1925 B 247. | 43. <i>Raja Chetty v. Jagannath Dass Gorind Dass</i> , 1950 M 284. |
| 38. <i>Chandmal v. Backraj</i> , 7 B 474. | 44. <i>M/s George Qakes Ltd. v. The Chief Judge Small Cause Court</i> , 1951 M 222. |
| 39. <i>Sheikh Yusuf v. Jyotish</i> , 1912 C 241=59 C 739. | 45. <i>Satish Chand Roy v. Bimalendu Sen</i> , 1951 Ass 27. |
| 40. <i>Makhan Lal Kela v. Girdhari Lal</i> , 1951 A L J 671=1951 A W R 496 (H.C). | 46. <i>Guru Padappa Sheralingappa v. Akbar Sayad Budan Kudri</i> , 1950 B 252. |
| 41. <i>Radhey Lal v. Mst. Lareti</i> , 1954 A 160=1952 A L J 230=1952 A W R 14 (H.C.)=1952 R D 29 (H.C). | 47. <i>Bryne's Law Dictionary</i> . |
| 42. <i>Sahabuddin v. Mohan Lal</i> , 1951 A 227=1951 A L J 722=1951 A W R 212 (H.C) See also <i>Narain Devi v. Hakim Mohammad Amin</i> , 1954 | 48. <i>Radhey Mohan v. Har Narain Dass</i> , 1952 A W R 117 (H.C). |
| | 49. <i>Lala Munshi Lal v. Thakur Bal-mukund Singh</i> , 1952 A L J 176. |

A default or negligence will be considered as wilful, when under ordinary circumstances the person making the default or committing negligence would have refrained from making or committing the same⁵⁰. Their Lordships of Privy Council have held that the expression "wilful neglect" means that the act is done deliberately and intentionally and not by accident or inadvertance, but so that the mind of the person who does the act goes with it⁵¹. The illustrative cases of "wilful" negligence are given at the footnote⁵². These cases illustrate the meaning of "wilful". This word has been used in Section 1 of the Transfer of Property Act in connection with the definition of notice. The words "wilful abstention from inquiry or search" were taken to mean such abstention from inquiry or search as would show want of bona fides⁵³. It was held that the word "wilful" made it clear that the abstention from inquiry should be designed and due to a desire to avoid an inquiry which would lead to ultimate knowledge⁵⁴.

Wilful default after notice.—This envisages a case where in spite of demands made, the tenant does not pay the rent. Where a tenant had deposited the rent in a previous suit even before receiving a notice of demand from the landlord and in reply to the notice, tenant apprised the landlord of the factum of deposit, the non payment of rent within one month of the notice of demand would not amount to wilful default⁵⁵. Where a landlord gave a notice of demand for a certain specified period, and the tenant sent the amount, but not for the entire period, there was no compliance with notice, and therefore the tenant must be deemed to have wilfully defaulted in the payment of arrears after the notice⁵⁶. If a tenant does not pay the arrears, he commits default, and if it is intentional and not caused through accident or circumstances beyond his control, it is a wilful default, and the reasons are wholly immaterial⁵⁷. This will have no effect on suits filed after September 30, 1954.

Wilful Default—Illustrative Cases.—The following may be given as illustrative cases of useful default:—

(1) Arrears of rent transferred along with the house and not paid to the purchaser after notice⁵⁸.

(2) A tenant not sending rent after refusal of money order for one month's rent⁵⁹.

(3) A notice of demand is given for four months' arrears of rent, but the tenant pays only a part of the amount⁶⁰.

(4) A tenant, having once agreed, refusing to pay rent at enhanced rate⁶¹.

(5) A tenant sending rent by bank draft, in the absence of any agreement, which is lost, and he refuses to pay inspite of notice⁶².

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| <p>50. <i>A Manual of Law Terms and Phrases</i> by Aiyer (1927 Edition).</p> <p>51. <i>Ardeshir Bhicaji Tamboli v. Agent G. I. P. Ry. Co.</i>, 1928 P C 24
See also <i>U. S. A. v. Murdock</i>, 290 U S 389=78 L E 38; <i>Browder v. U. S. A.</i>, 85 L E 362=312 U S 335; <i>Spies v. U. S. A.</i>, 317 U S 492=87 L E 418; <i>Lewi v. Great Western Railway Co.</i>, 3 Q B D 195.</p> <p>52. <i>Sheo Narain v. East Indian Railway</i>, 1628 A 102; <i>Brindaban v. G. I. P. Ry. Co.</i>, 1926 A 334 and <i>Govind Narain Kakade v. Ranjan Nath Gopal</i>, 1930 B 572; <i>Hori Lal v. Amar Nath</i>, 1951 A W R 294 (H C).</p> <p>53. <i>Joshua v. Alliance Bank of Simla</i>, 22 C 185.</p> <p>54. <i>Kausali v. Sankaramuthu</i> 1941 M 707.</p> <p>55. <i>Raj Narain v. Messrs Sita Ram Radha Kishan Dass</i>, 1950 A L J 3=1951 A W R 115 (H C).</p> <p>56. <i>Ram Swarup v. Smt. Gayatri Devi</i>,</p> | <p>1952 A L J 373.</p> <p>57. <i>Shri Lallan Parsad v. Shri Sharda Prasad</i> 1952 A L J 751. See also <i>Chotey Lal v. Chhakki Lal</i>, 1952 A L J 701; and <i>Mohan Lal v. Lala Kunwar Sen</i>, 194 A L J 160.</p> <p>58. <i>K. M. Mullick v. Jyotish Chander Mukerji</i>, 1949 C 571.</p> <p>59. <i>Chotey Lal v. Chhakki Lal</i>, 1953 A 113=1952 A L J 701; <i>Anand-alwar v. Second Judge, Court of Small Causes</i>, 1940 M 788. But see <i>Gauri Shankar v. Ganga Prasad</i>, 1949 Pat 191.</p> <p>60. <i>Mohan Lal v. Kunwar Sen</i>, 1954 A 480=1954 A L J 160=1954 A W R 149 (H C); <i>Ram Swarup v. Gayatri Devi</i>, 1952 A 863=1952 A L J 373=1952 A W R 290.</p> <p>61. <i>Lallan Prasad v. Sharda Prasad</i>, 1953 A 316=1952 A L J 751=A W R 676 (H C).</p> <p>62. <i>Mohan Lal v. Kunwar Sen</i>, 1954 A 480.</p> |
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(6) A tenant sending rent at his own rate inspite of notice of demand at a higher rate, which is found to be correct ⁶³.

(7) A tenant refusing to reply to a notice of demand or to send rent at a rate which he considered correct and legal ⁶⁴.

New sub-section 3 (a).—The new sub-section require; that the tenant must be in arrears of rent for more than three months and must have failed to pay the same within one month of the service upon him a notice of demand. The phrase "more than three months" indicates that the arrears must be for four months or more and not for three months only while the word "same" denotes that after notice has been given the entire arrears mentioned in the notice must be paid. It is not open to the tenant to retain the rent for three months and pay what is in excess ⁶⁵.

Payment of Rent—Mode and place.—Under Section 108 (1) T. P. Act the lessee is bound to pay or tender at the proper time and place, the premium or rent to the lessor or his agent in this behalf. There is nothing in this section to require lessor to make a demand ⁶⁶, and it is the tenant's duty to seek out the lessor ⁶⁷. The tenant's inability to pay rent begins from the date, when he is put in possession of the demised premises ⁶⁸, and the tenant is not bound to pay rent for the portion of the property of which he has not obtained possession ⁶⁹. If a tenant has been evicted against his will or forced to attorn to a person holding title paramount, he would be freed from his liability ⁷⁰.

The payment may be made not only in the current coin of the realm, but in any other medium that the creditor may choose to accept ⁷¹. If the lessee sends a cheque or bill without any authority or request by the creditor that the amount should be remitted in that manner, the latter is not bound to accept it ⁷², but the objection to the form of tender may be expressly or impliedly waived by the creditor, and he will be deemed to have waived the objection, if he rejects the tender on the ground of the insufficiency in amount or on some other ground, without making any objection to the legality of the tender ⁷³. Payment through the post is at tenant's risk ⁷⁴ unless the landlord has led the lessee to believe that he may resort to the post for payment ⁷⁵. Sending a bank draft is not payment, and it cannot even be treated as a valid tender ⁷⁶.

In case of joint lessor, a payment to one of the co-lessors will not be a valid discharge of the debt against them all ⁷⁷. As a general rule one of the several joint lessors cannot sue for his share of the rent ⁷⁸, but he can sue for the entire rent making all the other co-lessors defendants ⁷⁹.

Arrears of rent—meaning.—It includes time-barred rent ⁸⁰. Thought in a suit for rent, arrears for more than three years cannot be recovered, yet in a suit for ejectment, on the ground of the forfeiture of the lease owing to non-payment of rent, the court can relieve the tenant against forfeiture only on condition of his

- 63. *Radhay Mohan v. Har Narain Dass*, 1952 A 504=1952 A L J 152=1952 A W R 117 (H C).
- 64. *Ibid*, But see *Ram Dhan v. Jagdish Prasad*, 1951 Ajmere 54.
- 65. *Sarat Chandra Dutt v. Ushangini Dassi*, 1949 C 576.
- 66. *Nasiruddin v. Umarji Adam & Co.*; 1941 B 286.
- 67. *Moti Lal v. Surajmal*, 30 B 167; *In the matter of Maung Byn*, 1940 R 84.
- 68. *Shamz Prasad v. Taki*, C W N 816.
- 69. *Siba Kumari v. Bipordas*, 12 C W N 767.
- 70. *Belas v. Dasraj*, 42 I A 202; *Narayana Swami v. Lakshmi Narasimha*, 1933 M 220; *Chandra v. Narendra Chandra*, 46 C 956.
- 71. *Ragho v. Hari*, 24 B 619.
- 72. *Krishna Prasad v. Beni Ram*, 24 A 85; *Jagat Tarini v. Naba Gopal* 34 C 305.
- 73. *Jagat Tarini v. Naba Gopal*, 34 C 305; *Jones v. Arthur*, 5 Dow 422; *Cine v. Coulton*, 1 H & C 764.
- 74. *Hawkins v. Rutt* (1793) Peake 248.
- 75. *Warwicks v. Noakes*, (1791) Peake 98; *Norman v. Rockette*, 3 T L R 182.
- 76. *Mohan Lal v. Lala Kunwar Sen*, 1954 A L J 160.
- 77. *Azim Sardar v. Rahmat*, 25 C 324.
- 78. *Baraboni Coal Concern Limited v. Gokulananda*, 61 IA 35=1934 P C 58.
- 79. *Pramada Nath v. Ramani Kanta*, 35 IA 73; *Durga Mohan v. Ali Bakesha*, 1927 C 79.
- 80. *Vamana v. Venkata*, 1936 M 116.

paying the full rent, though it is for a longer period than 3 years ⁸¹. The reason is that though the lessor's remedy under the law to recover rent may be lost, the tenant's liability in equity to pay the rent subsists ⁸². The arrears, even if decreed do not cease to be arrears, and a tenant is liable to ejection, if he happens to be in arrears, even if decreed, as Section 3(1)(a) does not make distinction between decreed and undecreed arrears ⁸³. A landlord gives notice demanding the arrears of rent, both decreed and undecreed and the tenant pays only the undecreed arrears, he commits wilful default ⁸⁴.

Payment in Court after suit for ejection—Effect—The lessee is under a statutory obligation to pay the rent as provided in Section 108(b). The non-payment of rent, however, does not determine the tenancy or constitute adverse possession as long as the relationship of landlord and tenant subsists ⁸⁵. Section 114 Transfer of Property Act provides that where a lease of immovable property determines for non-payment the lessee may be relieved of the forfeiture under certain conditions. This is based on the principle of equity, that where the object of clause of forfeiture namely, to secure the rent, is fulfilled and the tenant puts the landlord in the same position as if no default in payment had been made, the forfeiture should be relieved against. It is well-known rule of interpretation that wherever a penalty is provided to secure the performance of an act, the latter is considered as the principal intent of the instrument and the penalty is deemed only as necessary and intended only to secure such performance ⁸⁶. Where the forfeiture of a lease and an entry for the forfeiture is stipulated for in a lease, in case of non-payment of rent, the right of re-entry is deemed merely as security for rent. If the lessee makes adequate compensation to the landlord and puts him in the same position as if the rent was paid to him when it was due, he should be relieved from forfeiture by a Court of Equity ⁸⁷. Section 114 of P. Act was applied to relieve the tenants against forfeiture in a case falling under the provisions of the Calcutta Rent Act, and it was held that the T. P. Act must not be deemed to have been abrogated by the provisions of the Calcutta Rent Act which is an Act of a Local Government ⁸⁸. There is no reason why this equitable principle should not be extended to cases falling under Section 3(a) of Act III of 1917, and Section 114 of the Transfer of Property Act should not be applied. However, the advantage provided by this section can only be taken at the very first opportunity. It would be unfair to the lessor if the lessee is allowed to take advantage of this provision after a decree has been obtained ⁸⁹. The words in the section "at the hearing of the suit" and "in lieu of making decree for ejection" used in this section clearly suggest that they have reference to a stage prior to the decree of the trial court, and do not include a court of appeal ⁹⁰. The relief, in any case, is discretionary and where the tenant has been irregular in payment of rent even when a regular notice of demand was served upon him and when he was about to be sued, he sent some rent it may be refused ⁹¹.

Notice of demand and suit combined—Effect—There is no prohibition against a combined notice. In England it has been held that notice otherwise sufficient is not rendered insufficient by its being accompanied with something else ⁹². Section 3(a) merely lays down that no suit for eviction shall be filed until the expiry of one month from the service of the notice of demand on the lessee, and does not mean that a right of eviction shall not accrue unless a notice of demand

81. *Vasudeva v. Krishna Upda*, 4 M 629=62 IC 583; *Dharumtolla Properties Limited v. Dhunbai*, 58 C 311=1931 C 457.
82. *Appayya Shetty v. Mohammed Beari*, 39 M 834=30 IC 596. See also *J. W. Peters v. Ram Narain*, 1949 A 537=1949 A W R 27.
83. *J. W Peters v. R.m Narain*, 1949 A 537=1949 A W R 27.
84. *Chotey Lal v. Chakki Lal*, 1952 A L J 701= 1953 A 113. *Premseikh Dass v. Bhupya*, 2 A 517; *A. K. v. A. Dutt* 1222; *Halsbury's Laws of England*, Volume 18, para 922.

87. *Dhurramtalla Properties Limited v. Dhunbai*, 58 C 311=1931 C 437.
88. *Ahindar v. Twiss*, 49 C 150=70 I C 75.
89. *Habib Ahmad v. Reoti Kuer*, 1946 A L J 121=1946 A W R 54 (II C). *Northern India Coal Co., v. Met. Bitti Kuer*, 1950 A 523=1949 A W R 539 (H C) But see *Ramkrishna v. Baburaya*, 23 M L J 715.
91. *Khumanji v. Saktry Lal*, 1951 AWR 197 (H C).
92. *Ahearan v. Bellman & Ex. D* 201.

has been served, and the lessee has failed to make the payment⁹³. The right of eviction subsists, but the exercise of that right by a suit is suspended till the expiry of one month from the service of the notice of demand. Therefore, a notice demanding the arrears of rent combined with the demand to quit is not bad. Of course the lessor has no right to sue unless one month has expired from the service of the notice⁹⁴. The institution of a suit is not a notice of demand, nor this section is limited to any particular arrears⁹⁵.

Notice of demand—Requirements.—There is nothing in the Act to show that the notice of demand must contain such amount as are ultimately admitted by the tenant or found by the court to be correct. If the tenant does not admit the entire amount mentioned in notice, there seems to be no reason why he should not pay at least such amount as he considers to be due. The "notice of demand" as used in the Act does not mean that it should contain the precise amount that may be ultimately found due at the time that the notice was given⁹⁶.

Waiver.—If the landlord actively continues the prosecution of the case or appeal with regard to the ejectionment of the tenant mere acceptance of rent by him cannot be treated as waiver so as to deprive him of the right of ejection in pursuance of a decree which he has obtained. The receipt issued are of no consequence⁹⁷. Where a landlord has served a notice under Section 106 of the Transfer of Property Act to vacate the premises by a certain date and the rent due for a period prior to the date fixed in the notice is received, there was no waiver⁹⁸.

Service of Notice.—No mode of service of a notice of demand is prescribed by the Act, and therefore if it is merely a notice of demand for arrears of rent, no formality is necessary. If the notice is delivered by some one to the tenant, the requirements of this section are complied with. But in case it is combined with a notice to quit, it must be served in the manner laid down by Section 106, Transfer of Property Act.

Notice Time.—The notice of demand for arrears of rent should be given prior to the filing of the suit in order to bring the case within Section 3(a). A notice given subsequent to the filing of the suit would be of no avail and a tenant not complying with such a notice, cannot be said to have made a default in payment of arrears of rent within the meaning of Section 3(a)⁹⁹.

Landlord Meaning—See Section 2(c) and the commentary thereon.

Section 3 (1) (b)

General.—The principle enunciated by this clause has been derived from Section 108(o) Transfer of Property Act, which lays down that a lessee may use the property and its products (if any) as a person of ordinary prudence would use them if they were his own; but he must not use, or permit another to use, the property for a purpose other than that for which it was leased, or fell or sell timber, pull down or damage buildings belonging to the lessor, or work mines or quarries not open when the lease was granted, or commit any other act, which is destructive or permanently injurious thereto. A breach of the obligation under Section 108(o) did not necessarily entail forfeiture of the lease. The lessor was entitled to claim damages¹, or an injunction restraining the tenant from committing such breach²; he could not on his own responsibility evict the tenant or induct any other person on the land³. Now Section 3(b) of Act III of 1947 gives the lessor a right to sue the lessee for ejectionment in case he has

- 93. *Khumani v. Saktey Lal*, 1951 ALJ 331.
- 94. *Bhagat Sing Bugga & Co v. Mrs. Gangotri Devi*, 1949 Oudh 11.
- 95. *Faiyaz Haider v. Radhey Raman*, 1949 A W R 26=1949 A 891; *J. W. Peters v. Ram Narain Mehrotra*; see also *Bharat Singh v. Gangotri*, 1948 A W R (C. C.) 114 =1949 A 537.
- 96. *L. Manohar Lal v. Lala Bimal Kumar*, 1955 A W R 395 (H C).
- 97. *Khumani v. Saktey Lal*, 1951 ALJ

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- 98. *Ram Swarup v. Smit. Gayathri*, 1952 A W R 290 (H. C.); *Bitti Kuer v. Banarsi Babu*, 1949 AWR 213.
- 99. *Radhey Lal v. Mst. Lareti*, 1954 A 150.
- 1. *Noyana Missir v. Ruplikun* 9 C 609.
- 2. *Doraikannu Amal v. Ramaswami Mudiar*, 1940 M 32.
- 3. *Kadir Buksh v Sheo Prasad*, 42 I C 111.

wilfully caused or permitted to be caused substantial damage to the accommodation. But before a suit is filed, the lessor must give a notice under Section 106 and Section 114-A, Transfer of property Act⁴.

Wilfully—Meaning.—See Section 3(a) and commentary thereon. The word wilful used in this sub-section means purposely, intentionally and deliberately. The words "permitted to be caused" imply some deliberate act with the tenant's assent, connivance or acquiescence on the part of some one or other than the tenant causing substantial damage to the accommodation⁵.

Substantial damage—Meaning.—“Substantial damage” would mean damage in essential parts so as to make it unfit for the purposes for which it was leased. These words convey the same sense as “destructive or permanently injurious” used in Section 108(o), T. P. Act and are tantamount to waste. Waste may be done in houses by pulling them down or suffering them to be uncovered, whereby, the rafters or other timber of the house becomes rotten. If a lessee permits the walls to decay, this is waste⁶. It was held that a tenant from year to year who had removed a partition wall, a staircase and fireplace and converted a dwelling house and shop into one large shop, had committed waste. Waste is said to be voluntary i. e., doing an act which is destructive of the premises, or permissive i. e., an omission to make necessary repairs. The liability for permissive waste arises out of the obligation under Section 108(m) to keep the property in a good condition subject to fair wear and tear. Clause (b) of Section 3 of Act III of 1947 deals with voluntary waste, “Voluntary Waste” chiefly consists in felling timber trees pulling down houses, opening mines, or pits or changing the course of husbandry. Whatever does the least damage to the freehold or inheritance is waste. Therefore removing wainscots, floors, or other things once fixed to the freehold of a house is waste, and if the windows are broken or carried away it is waste⁷.

It was however held in a Madras case that a demolition of the wall of a building would not, by itself, be an act, of waste unless it was shown that it materially impaired the value or the utility of the house⁸.

Section 3 (1) (c)

General.—Section 108 (p), T. P. Act lays down that a lessee must not without the lessor's consent, erect on the property permanent structure, except for agricultural purposes. This was a departure from English Law, where there is no prohibition against a tenant erecting permanent structure on the land, which do not cause damage to the land, but which really improve it. This is known as ameliorating waste in the English Law i. e., such voluntary waste as improves the demised property. It is *per se* not actionable unless it can be proved that the lessor has thereby suffered substantial damage⁹. Sir George Jessel in one case summing up the law observed, “The erection of buildings upon lands which improve the value of the land is not waste. In order to prove waste you must prove an injury to the inheritance¹⁰. The same view was expressed in another case¹¹. Under Section 108 (p) a lessee could not erect any permanent structure on the land for non-agricultural purposes¹². The lessee of a building could not even add a structure to it, for it might have wholly different effect from what was contemplated when the lease was given¹³. In other words there was an absolute prohibition against the erection of any permanent structure on the property demised. Section 3 (c) of Act III of 1947 appears to combine the two rules of law. The lessee is not prohibited from committing ameliorating waste unless it materially alters the accommodation. He, however, cannot make constructions which are likely substantially to diminish its value,

- 4. *Pravat Chandra v. Bengal Central Bank Limited*, 1938 C 589.
- 5. *Horilal Varshaney v. Pandit Amar Nath Sharma*, 1951 A W R 294 (H C).
- 6. *Mansden v. Heyes*, 96 L J K B 410.
- 7. Woodfall's Landlord and Tenant Chapter XVI (21st Ed) page 768, 769.
- 8. *R. Govindswami Waldu v. G. Pushalemma*, 1952 M 181.
- 9. *Doherty v. Allman*, 3 A C 709; *Binda Prasad v. Pandit Behari Tewari* 1936 O 316.
- 10. *Jones v. Chappel*, L R 20 Eq. 539.
- 11. *Menx v. Cobley*, 2 Ch 253.
- 12. *Jagannath Naisak v. Prasannacoomar*, 9 C L R 221; *Naunihal Bhaggat v. Rameshar*, 16 A 328.
- 13. *Kolabhoti Lallubhai v. Hargovan*, 19 B 133; *Abdul Rahim v. Municipal Committee Delhi*, 1927 L 225.

Construction—Meaning.—“Construction” and “erection” seem to be synonymous in their meaning; and in common acceptation, when applied to a house they mean the building of it by putting together the necessary material raising it. The term includes alterations or repairs¹⁴.

Alteration—Meaning.—The term alter is to be distinguished from its synonyms “change” and “amend”. To change may import the substitution of an entirely different thing, while to alter is to operate upon a subject-matter which continues objectively the same while modified in some particulars. To amend implies that the modification made in the subject improves it, which is not necessarily the case with an alteration. An amendment always involves an alteration, but an alteration does not always amend¹⁵. The word alteration must be limited to something which alters the form and construction of a building¹⁶.

Material alterations—Whether or not the alterations amount to a breach is a question of degree depending upon the particular facts. Opening a door through the wall, either within the house itself or into an adjoining house has been held a breach¹⁷. The Irish Court of Exchequer held that a covenant to keep in repairs a dwelling house and all improvements, was broken by taking away the partition wall, removing stairs, and converting the house into a shop¹⁸. Pulling down a building, even for the purposes of re-building¹⁹; pulling down a wall dividing a front from a side courtyard were held to amount to a breach²⁰. The prohibition is limited to alteration which would affect the form or structure of the building and not merely its appearance and would not prohibit a watchmaker from affixing a large clock to the exterior wall of a house by means of bolts driven in it²¹. If a lessee pulls down a house, removes any part thereof, as the windows, doors, wainscot, or other fixture, which though affixed by himself, are not at law removable, or if he unroofs the buildings or alter one kind of building into another, as a corn mill into a flooring mill, or a hull into a stable, or throw two rooms into one, in each case it is waste²².

Section 3 (1) (d)

Inconsistent Use.—The general principle is that tenant must use the property for the purposes for which it is granted²³, and use it in a reasonable and tenant-like manner. English cases mostly turn on express covenants, while Indian cases mostly arise with reference to agricultural tenancies, but in both, the principle is the same. The following may be given as illustrative cases:—

(1) A tenant planting trees on land let for cultivation is liable to ejectment²⁴.

(2) An agricultural tenant, at a time when there were no crops growing on his holding let part of it temporarily to a theatrical company for the purpose of their holding performance thereon; held that it was not an inconsistent act²⁵.

(3) Land let for agricultural purposes to a *qabzulari* tenant, who built a godown and brick kiln thereon; held to be an inconsistent act²⁶. Erection of indigo factory on such land is also misuse²⁷; or converting it into a building land²⁸.

- 14. The Law Lexicon by P R Iyer.
- 15. *Ibid.*
- 16. Woodfall's Landlord, and Tenant, Page 82^o.
- 17. *Deo v. Jackson* (1817) 2 Stark 293.
- 18. *Elliot v. Watkins*, (1835) 1 Jones 308.
- 19. *Gange v. Lockwood*, (1860) 2 F & F 115.
- 20. *Deo v. Bird* (1833) 6 C & P 195; *Rose v. Hyman* (1911) 2 K B 234.
- 21. *Bickmore v. Dinimer*, (1903) 1 Ch. 158; *Hope v. Cown* (1913) 2 Ch. 312.
- 22. *Barret v. Banet* (1628), *Hetley* 35; *Deo v. Earl of Burlington*, (1933)

- 23. 5 B & Ad 507. *Doherty v. Allman* (1878) 3 App. Cas 733; *Tucker v. Linger* (1882) 21 Ch. D 18; *Wets Ham Charity Board v. East London Waterworks Co* (1904) 1 Ch 624.
- 24. *Lal Shahu v. Deo Narain Singh* 3 C 781.
- 25. *Bholai v. Raja Bansi*, 4 A 174.
- 26. *Yusuf Ali Khan v. Hira*, 20 A 469.
- 27. *Binda Prasad v. Pt. Behari Tewari* 1936 Oudh 316.
- 28. *Surendra Narain Singh v. Hari Mohan Misir*, 31 C 174.
- 29. *Madho Lal v. Shew Prasad*, 12 A 419; *Ramanadhin v. Zamindar of Ramnad*, 16 M 407.

(4) Land demised for wet cultivation ; the tenant converted a large portion of it into *paramha*, planting jack, cocoanut and areca-nut tree, held to be inconsistent purpose ²⁹.

(5) Tenant allowed to use site for tying cattle or storing heaps of cowdung cakes, using it for building a structure for keeping and preserving chaff, held to be inconsistent act ³⁰.

(6) A tenant erecting a building in flower garden is misusing it ³¹.

(7) House let for private residence—user for receiving as lodgers the governesses and pupils of a neighbouring school is misuse ³². However, the use of the building for a couple of days for putting up a marriage party cannot be said to be an inconsistent use ³³.

(8) A leased to B his oil well site and the right to win the oil therefrom. No oil in any commercial quantity was obtained. But gas came out from the wells drilled, and by pipes B was able to enclose the gas and use it for his own purposes. Held that it was not an inconsistent purpose ³⁴.

(9) Land let for agricultural purposes generally, used for the building of an indigo factory. Held that the question whether the user was inconsistent depended upon the size of the holding, area withdrawn from actual cultivation, and the effect of such withdrawal upon the fitness of the holding taken as a whole for profitable cultivation ³⁵.

(10) Planting of trees not materially affecting the character of the holding is not inconsistent user.

(11) A mortgage of his holding by an occupancy tenant; under which the mortgagor obtains possession is not an act inconsistent with the purpose for which the land was let ³⁶.

Nuisance—Meaning—The word “nuisance” is derived from the French word *nuire*, to do hurt or to annoy. Blackstone describes nuisance (*nocumentum*) as something that “worketh hurt, inconvenience, or damage”. Therefore, nuisance means anything done to the hurt, or annoyance of the land, tenements or hereditaments of another and not amounting to a trespass. The forms which nuisance may take are protean. It is of two kinds; (1) Public, (2) Private. A person is guilty of a public nuisance who does any act, or is guilty of an illegal omission, which causes any common injury, danger or annoyance, to the public or to the people in general who dwell, or occupy property, in the vicinity, or which must necessarily cause injury, obstruction, danger or annoyance to persons who may have occasion to use any public right ³⁷. Public nuisance does not create a civil cause of action for any person. In order that an individual may have a private right of action in respect of a public nuisance he (1) must show a particular injury to himself beyond that suffered by the rest of the public ³⁸, (2) must prove that the injury was direct and not a mere consequential injury and (3) must show that the injury was, of a substantial character, not fleeting or evanescent ³⁹. Private nuisance is the using or authorising the use of one's property or anything under one's control, so as to injuriously affect an owner or occupier of property by physically injuring his property or interfering materially with his health, comfort or convenience. Private nuisance includes acts leading to (a) wrongful disturbance of easements or servitudes e. g., obstruction to light and air, disturbance of right to support; or (b) wrongful escape of deleterious substances into another's property, such as smoke, smell, fumes, gas, noise, water, filth, heat, electricity, disease germs, trees, vegetation, animals etc. There may be nuisance producing material injury to property and one producing personal discomfort.

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| <p>29. <i>Kunhammed v. Narayab Mussad</i>
12 M 320.</p> <p>30. <i>B. Bhagwant Rai v. Jaddu Raj Rai</i>,
1926 A 66.</p> <p>31. <i>Doraikanu Ammal v. Ramas awmi
Muddaliar</i>, 1940 M :2.</p> <p>32. <i>Hobson v. Tulloch</i>, (1898) 1 Ch. 424
—78 L T 221.</p> <p>33. <i>Badri Narain Lal v. Ramji Lal</i>
1954 A 49.</p> <p>34. <i>U. Po. Naing v. Burma Oil Co. Ltd.</i></p> | <p>1929 P. C. 108.</p> <p>35. <i>Harry Mohan Misser v. Surendra
Narain Singh</i>, 13 C 718=34 I A
138.</p> <p>36. <i>Madho Lal v. Sheo Prasad Misr</i>,
12 A 19 (F B)</p> <p>37. Indian Penal Code, Section 265.</p> <p>38. <i>The Municipal Board of Lucknow
v. Musammat Ranidei</i> 16 Luck
173.</p> <p>39. <i>Sadu v. Suka</i>, 5 Bom L R 116.</p> |
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The law does not regard trifling and small inconveniences, but only regards sensible inconveniences, injuries which sensibly diminish the comfort, enjoyment or value of the property which is affected⁴⁰.

Nuisance, when actionable.—Nuisance may be public or private. A lessor can sue for nuisance if the reversionary interest is affected⁴¹. Injury to reversionary interest are by strangers or by tenants. Injuries of the second kind are known as waste. Waste is a spoil or destruction of houses, gardens, trees or other corporeal hereditaments, to the disherison of him, who hath the remainder or reversion. Whatever does a lasting damage to the freehold is waste⁴². Some act or omission prejudicial to inheritance is essential upon which to ground an action for waste⁴³. A reversioner cannot sue for anything as an injury to his reversion unless it permanently injures his estate, or operates in denial of his right⁴⁴. "Nuisance", as used in clause (d) of Section 3 must be deemed to have been used by the legislature in the sense of waste and controlled by the subsequent words: "which is inconsistent with the purpose for which he was admitted to the tenancy of the accommodation, or which is likely to affect adversely and substantially the landlord's interest therel." See also *Walker v. Thomas*, (1921) 1 K. B. 541 and 70 C. W. N. 756.

Creating Nuisance—Meaning.—Those words include, on the part of the tenant, acts and behaviour which make it extremely inconvenient for the landlord or any other tenant occupying a portion of the house to live in peaceful manner. A person who abuses his position as a tenant by resorting to acts of violence against his landlord, who is occupying a portion of the house, creates a nuisance as would entitle the landlord to go to a court of law and seek his ejection without the permission of the District Magistrate under Section 3 of the Act. To put any other interpretation upon the words would be to put a premium on gross misbehaviour on the part of the tenant occupying a house in a portion of which his landlord also happens to be staying⁴⁵.

Abusing and quarrelling would constitute nuisance⁴⁶. If the different parts of a house are let out to different tenants and one of them quarrels with other tenants and is a cause of nuisance to them, he can be ejected⁴⁷.

Section 3 (1) (e)

General.—Under Section 103 (j), T. P. Act the lessee has been given a right to transfer absolutely or by way of mortgage or sub-lease the whole or any part of his interest in the property. Section 3 (e) of Act III of 1947 gives the lessor a right of ejection in case the lessee sub-lets the whole or any portion of the accommodation without the permission of the landlord. This conflicts with the general right of transfer given to the lessee, and on the principle *generalia, speciulia non-derogant*, the special laws shall prevail⁴⁸. This restriction on sub-letting is confined to those made after 1st day of October, 1946, and sub-leases made prior to that date cannot give a lessor any cause of action for a suit for ejection.

Permission.—As distinguished from "allow" or "suffer", "permit" is more positive, denoting a decided assent, either directly or by implication. The difference between "consent" and "permit" is that the former implies some positive action, while the latter implies merely passivity.

Permission may be express or implied i. e., permission need not always be by word, it may be by act or conduct e. g., by acquiescence. Implied permission is nothing more or less than acquiescence, which is acquiescence under such circumstances that assent may be reasonably inferred from it and is no more

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| 40. <i>Helen's Smelting Co. v. Tipping</i> , 11 H L C 642, 653.
41. <i>Ratanlal's Law of Torts</i> 1947, Edition page 222.
42. <i>Tucher v. Hinger</i> , 8 App. Case 505.
43. (<i>Rantan Lal</i>).
44. <i>Woodfall's Landlord and Tenant (Ch. XIX page 897.)</i>
45. <i>Sunder v. Lalita Prasad</i> , 1951 | 46. <i>Bhoji Lal M. Davay v. R. Subramania</i> (1953) 2 M L J 625.
47. <i>In re A. S. Vijayraghvalu Chetty</i> 1952 M 40.
<i>halamma</i> , 1952 In 181.
48. <i>Mohammad Azim Khan v. Mumtaz Ali Khan</i> , 8 O W N 1207 and <i>Municipal Board, Lucknow v. S. C. Deb</i> , 9 O W N 461. |
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than an instance of the law of estoppel by words or by conduct. In other words, acquiescence does not mean simply an active intelligent consent, but may be implied if a person is content not to oppose irregular acts which he knows are being done ⁴⁹.

Sub-letting.—Means a lease by a tenant to another person of the premises held by him. According to the explanation added to Section 3 (e) it does not include lodging a person in a hotel or a lodging house. An accommodation is taken on rent by three partners of a firm, and after the dissolution of the firm, one of the partner uses it for his sole business, he cannot be said to be a sub-tenant and there is no sub-letting ⁵⁰.

A licensee or invitee would not be a sub-tenant ⁵¹. To constitute sub-letting a right to exclusive right of possession and enjoyment should be created ⁵². A tenant entering into partnership with other persons must be deemed to have sub-let it, making him liable to ejection ⁵³.

Section 3 (1) (f)

General.—This clause is analogous to Section 111 (g) (2), which adopted the definition of disclaimer by Lindal C. J. ⁵⁴. “A disclaimer as the word imports, must be renunciation by the party of his character of tenant, either by setting up a title in another or by claiming title in himself.”

Renouncing his character—Meaning.—The word “renounce” connotes that some act is done to the knowledge of the landlord which is calculated to convey to him the impression that the tenant repudiated his title. Where the tenant disclaimed his landlord's title and asserted his own by an incidental and casual statement, but the assertion was not addressed to the landlord; held that it did not amount to disclaimer ⁵⁵. In order to constitute a disclaimer of title there must be direct repudiation of the relation of landlord and tenant or a distinct claim to hold the estate on a ground wholly inconsistent with the existence of any such relation ⁵⁶.

No disclaimer—Instances.—The following cases will serve as illustrations:—

(1) The denial of landlord's title by one of the joint tenant ⁵⁷. But a denial by a manager of a joint Hindu family is sufficient ⁵⁸.

(2) The denial of title by the original lessee, will have no effect against the assignee of the lessee ⁵⁹.

(3) Tenant not denying his liability to pay rent but setting up a higher status ⁶⁰.

(4) No specific denial, but setting up the right of one of the heirs of the original lessor ⁶¹.

(5) Putting the landlord to proof of his title ⁶².

(6) Setting up title of a co-sharer is not denial of whole title ⁶³.

(7) Denial of execution of *Kabuliat* ⁶⁴.

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| 49. <i>Surat Chandra v. Gopal Chander</i> ,
19 I A 203, <i>Bhimappa v. Basawa</i> ,
29 B 400. | 33 A 145; <i>Vivian v. Moat</i> , (1881)
16 Ch. D 730. |
| 50. <i>K. Deorjulu Naidu v. C. Ethira-yavathi</i> , 1950 M 25. | 57. <i>Jharu v. Mehtab-uddin</i> , 1928 C
718; <i>Gani Mia v. Wajid</i> , 39 CWN
882. |
| 51. <i>Vijayesh v. A. D. C. Akola</i> , 1952
N L J 62. | 58. <i>Krishnarao v. Ghamon</i> , 1935 B
144. |
| 52. <i>Ramgamanna Chetty v. Desu
Rangiah</i> , 1952 M L J 652,
<i>Tansukhdas Chaggan Lal v.
Shamabai</i> , 1954 N L J 100=1954
N 160 (1952 N 312 distinguished). | 59. <i>Gopal v. Shrinivas</i> , 42 B 734. |
| 54. <i>Deod. Williams and Jaffery v.
Cooper</i> (1840) 1 Man and G 135. | 60. <i>Amar Krishna v. Naeir Hasan</i> ,
1939 O W N 835. |
| 55. <i>Kemalooti v. Muhammed</i> , 41 M
629. | 61. <i>Malika v. Makhhan Lal</i> , 9 CWN
928; <i>Abdullah v. Mohd. Muslim</i> ,
1926 C 1205. |
| 56. <i>Kamulukutti v. Mohd.</i> 41 M 629;
<i>Dead. Gray v. Stanton</i> , 150 E R
614; <i>Prag Narain v. Qadir Baksh</i> , | 62. <i>Golam Rabbani v. Tara Nath Deb</i> ,
1925 C 1212; <i>Hatimulla v.
Mehammad Abju</i> , 1928 C 312. |
| | 63. <i>Neamatullah v. Bajiullah</i> , 1915 C
660=66 I C 619. |
| | 64. <i>Abdull v. Mudin</i> , 1926 C 1305. |

Waiver of forfeiture.—In cases falling under Section 111 (g), the lease is voidable at the option of the lessor. In *Craft v. Lumley*, (1858) 6 H. L. C. 705, Baron Brawell has put three alternatives, which a lessor may adopt: (1) elect to avoid the lease or (2) elect not to avoid the lease or (3) make no election. If he elects to avoid, he must give a notice as required by Section 111 (g) of his intention to determine the lease. If he elects not to avoid the lease, it amounts to waiver of forfeiture. This election may be express or implied from one or the other of the acts mentioned in Section 112, Transfer of Property Act, provided that the lessor is aware of the forfeiture. Merely lying by and witnessing the breach is no waiver⁶⁵, although from long continued acquiescence in repeated breaches, waiver may be inferred⁶⁶.

Courts of law always lean against forfeiture⁶⁷.

Therefore, if a lessor wants to take advantage of the forfeiture, he must take care not to do anything which may be deemed an acknowledgment of the continuance of the tenancy, and so operate as waiver of the forfeiture. The following acts amount to waiver:

(1) Demand of rent accruing due after the forfeiture⁶⁸.

(2) Acceptance of rent accruing due after the forfeiture⁶⁹. It would amount to waiver, even if the rent is accepted under protest or without prejudice to the forfeiture e. g. for use of occupation⁷⁰. But the subsequent receipt of rent due prior to the forfeiture is no waiver⁷¹, nor where the landlord actively continues the prosecution of the case or appeal with regard to the ejectment of the tenant, mere acceptance of rent by him would amount to waiver⁷².

(3) Action for rent accruing due after the forfeiture⁷³, or distress for rent⁷⁴.

(4) Forfeiture may be waived by pleadings⁷⁵.

(5) Giving of notice to quit may amount to waiver⁷⁶.

(6) Where the landlord accepts the rent due from the tenant before the privilege obtained by her under the permission of the Town Rating Officer is utilised, the privilege is waived⁷⁷.

Note:—Distress is recognised in England and prosidoney Towns.

Condonation—Meaning.—Condonation means a pardon or forgiveness of a past wrong or fault; forgiveness either express or implied by a husband of his wife, or by a wife of her husband for a breach of marital duty; forgiveness legally means releasing the injury.

Section (3) 1 (g)

Scope—Clause (g) of sub-section (1) of Section 3 has come as a great relief to employees. Employees occupying premises as tenant, as a part of the contract of employment could not be ejected previously after the determination of their employment without the permission of the District Magistrate. This new clause empowers the employers to eject the employee whose services have determined without such permission.

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| <p>65. <i>Deod. Sheppard v. Allen</i>, 12 R R 597.</p> <p>66. <i>Kelsay v. Dodd</i>, 52 L J Ch. 34.</p> <p>67. <i>Goodright d. Water v. Davids</i> (1778) <i>Coupl. 803</i>, per Lord Mansfield C. J.; <i>K. C. Sirkar v. G. C., Chanda</i>, 1937 C 636.</p> <p>68. <i>Deo d. Nash v. Birch</i>, 1 M & W 402 (408); <i>Jogeshuri v. Mohd. Ibrahim</i>, 14 C 33.</p> <p>69. <i>Chattor Singh v. Nand Kishore</i>, 12 A L J 1139; <i>Habib Ahmad, v. Reoti Kuer</i>, 1946 A L J = 1946 A W R 54 (H. C.).</p> <p>70. <i>Strong v. Stringer</i>, 61 L T 470.</p> | <p>71. <i>Purna Chandra v. Ali Mohammad</i>, 1924 C 520.</p> <p>72. <i>Khumanji v. Saktey Lal</i>, 1951 A W R 197 (H. C.).</p> <p>73. <i>Dendy v. Nicholl</i>, 24 L J C 220.</p> <p>74. <i>Cotesworth v. Spokes</i>, 30 L J C P 220.</p> <p>75. <i>Evans v. Davis</i>, (1878) 10 C D 747; <i>Pellat v. Boosey</i>, 31 L J (C P) 281.</p> <p>76. <i>Shiva Prasad Singh v. Smt. Mandira Kumari Debi</i>, 1940 Pat. 478.</p> <p>77. <i>Bitti Kuer v. Banarsi Babu</i>, 1949 A 610 = 1949 A W R 213 (H C).</p> |
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Section (3) 2

Scope.—This sub-section is new and has been enacted to allow the landlord or the tenant, as the case may be, to file a revision before the Commissioner against the orders of the District Magistrate within thirty days from the date of the communication of the order. The grounds on which a revision may be filed are given in sub-section (3)

Section (3) 3

Scope.—This sub-section has been completely changed, by the Amendment Act XVI of 1954. To appreciate the change the old sub-section is given below :—

“The Commissioner shall, as far as may be, hear the application within six weeks from the date of its making and if he is satisfied that the District Magistrate has acted illegally or with material irregularity, or has wrongly refused to act, he may confirm or set aside the order of the District Magistrate.”

The words used in the previous sub-section were borrowed from Section 115 of the Code of Civil Procedure and were limited in their scope, as “acting illegally” meant acting in breach of some provisions of law and, “acting with material irregularity” meant committing some error of procedure in the course of trial which was material in that it might have affected the ultimate decision⁷⁸. These words have now been purposely replaced and the Commissioner has been given wide powers to see if in the circumstances of the case the order is “correct, legal or proper” and the procedure adopted was regular. No procedure has been laid down for the District Magistrate, but he must act in accordance with rules of natural justice and not arbitrarily.

Section (3) 4

Scope.—This sub-section gives a further right of representation to the State Government against the order of the Commissioner, which shall be final subject to the orders on the representation.

Final—Writ.—Although the orders passed by the Commissioner are made final, but it does not take away the jurisdiction of the High Court to interfere under Articles 226 and 227 of the Constitution of India. This, however, cannot be exercised unless there has been an unwarranted assumption of jurisdiction not possessed by courts or a gross abuse of jurisdiction possessed by them or an unjustifiable refusal to exercise jurisdiction vested in them by law. The High Court can also act when there has been a flagrant abuse of the elementary principles of justice or a manifest error of law patent on the face of the record or as in ⁷⁹ outrageous miscarriage of justice⁸⁰. If the Court has not taken into consideration the needs of the landlord the order is vitiated⁸¹. Similarly, if the court does not weigh the hardship with due regard to the needs of both the landlord and the tenant a writ of certiorari would lie⁸¹. But if the District Magistrate is not guilty of malice or any corrupt motive and his order is not capricious, the High Court will not question his discretion⁸².

3-A.—(1) The District Magistrate may on the application of a person who has been allotted any accommodation to which sub-clause (1) of clause (f) of Section 2 applies declare the annual reasonable rent payable therefor. The District Magistrate may likewise on the application of a person who has been allotted any accommodation or of the landlord determine the reasonable annual rent of the accommodation to which any of the remaining provisions of the said clause may be applicable.

(2) In determining the reasonable annual rent the District Magistrate shall take into account.—

- 78. *Venkatagiri v. H. R. E. Board Madras*, 79 I. A. 67; *Keshar Dev. v. Radha Kishan*, 1953 S C 23.
- 79. *Jodhey v. State*, 1952 A 788.
- 80. *Ram Narain Tewari v. Ram Chndra*

- Sharma, 1953 A 354.
- 81. *Ram Chandra K. Gubrani v. Sugra Begam*, 1953 Hyd. 66.
- 82. *Bududu Ram v. Pearey Lal*, 1952 A 316=1952 A L J 535.

- (a) if the accommodation was constructed on or after July 1, 1946, the cost of land and the cost of construction, maintenance and repairs thereof, its situation and any other matter, which in the opinion of the District Magistrate is material, and,
- (b) if it is accommodation falling under sub-clause (2) or para. (i) of sub clause (3) of clause (f) of Section 2, the principles therein set forth, and,
- (c) if it is accommodation falling under para (ii) of sub-clause (3) of clause (f) aforesaid the principles set forth in clause (a) of sub-section (1) of Section 6.

(3) Subject to the result of any suit filed under sub-section (4) of Section 5, the rent declared or determined by the District Magistrate under this section shall be the annual reasonable rent of the accommodation.

Legislative changes.—Section 3-A which was added to the principal Act by U. P. Act XLIV of 1948, has been substituted by U. P. Act XVII of 1954.

Analogous law.—See Section 5 of the Assam Act ; Section 4 of the Behar Act, C. P. and Berar Order, Delhi and Ajmere Act, East Punjab Act, Madras Act, and Orissa Act ; Section 8 of the Bombay Act ; Section 6 of the Rajasthan Act and Trav. Cochin Order ; Section 9 of the West Bengal Act.

Revision.—No revision under Criminal Procedure Code would lie⁸³.

Determination of rent by District Magistrate.—A District Magistrate has been given powers to determine a reasonable annual rent, in the following cases :—

- (a) If the accommodation was constructed after June, 30, 1946.
- (b) If it was not assessed to Municipal assessment and was not held on rent, although constructed before June 30, 1946.
- (c) If it is part only of an accommodation.

District Magistrate – Fixation of Rent.—A District Magistrate has been given powers to fix the reasonable amount of rent only. In the absence of any such fixation of the “reasonable annual rent” by the District Magistrate, the Civil Court cannot take any amount as being reasonable rent⁸⁴. It is the duty of the District Magistrate to fix the reasonable annual rent under this section and the mere fact that a small cause suit for recovery of arrears of rent was pending does not absolve him of that duty⁸⁵. Both the landlord and the tenant have been given a right under Section 5 (4) to institute a suit for fixation of rent if they claim that the annual reasonable rent of the accommodation is inadequate or excessive, as the case may be. This means that the rent fixed by the District Magistrate can be challenged by a suit under Section 5 (4). This is clear from Section 3-A (3), as well, which lays down that the rent fixed under this section shall be the annual reasonable rent of the accommodation subject to the result of any suit filed under sub-section (4) of Section 5. This seems to be an exception to Section 16, which lays down that no order made under the Act shall be called in question in any Court.

District Magistrate—How to fix rent.—The District Magistrate has been given wide discretion in fixing the rent. This discretion must be exercised in accordance with sound general principles of law, and must be based on legal evidence. The points on which such evidence has to be adduced are given in the section. They are :—

83. *Ram Ratan v. Dodd*, 1947 A W R 6; *Annapurna v. A. D. M. Kanpur*, 1947 A W R 7; *Hari Kishen v. Emperor*, 1946 A W R 438.
84. *Raj Bahadur v. Babu Ram*, 1952

A L J 648=1952 A W R 102 (H C)
=1953 A-593.
85. *Jagan Nath Manchandra and others v. the District Magistrate of Allahabad*, 1952 A L J 43=1951 A 710.

(1) If the accommodation was constructed after June 30, 1946 the following matters have to be considered :—

(a) The cost of construction.

(b) The cost of maintenance and repairs of the accommodation.

(c) The situation of the accommodation.

(d) Any other matter, which the District Magistrate thinks material. This may include the prevailing rate of rent in the locality for similar accommodation with similar advantages and amenities, and other allied considerations. The District Magistrate has been given powers to take into consideration any matter, irrespective of the fact whether any evidence has been led by the parties or not. For analogy see *Barber v. Detenkar*, 30 C. W. N. 274.

(2) If it is a part of an accommodation assessed to Municipal assessment, the reasonable annual rent would be proportionate amount of the assessment plus 25 per cent.

(3) If the accommodation constructed previous to 1st July, was not assessed to Municipal assessment, and was not held on rent, the District Magistrate shall apply the principle set forth in clause (a) of sub section (1) of Section 6 viz :—

(a) The prevailing rate on the date of the suit for similar accommodation in the locality.

(b) The cost of maintenance and repairs of such accommodation.

(c) Any material circumstance proved by the plaintiff or the defendant. It is to be noted that here the District Magistrate has no such powers as are given in the case of accommodations constructed after June 30, 1946.

(d) The pre-war rent :—This principle would not apply unless sub-clauses (i) and (ii) of clause (3) of sub-section (f) of Section 2 are held to be interconnected and sub-clause (ii) means that the accommodation was not held on rent between April 1, 1942 and June 30, 1946.

(e) The reasonable annual or monthly rent. This principle of Section 6 (1) (a) would not apply as in this case according to the definition of reasonable annual rent, there would be no such rent unless the District Magistrate fixes it.

No fixation—Effect.—In the absence of any fixation of the reasonable annual rent by the District Magistrate as provided by this section, the Civil Court cannot take any amount as being the reasonable annual rent ⁸⁶.

Fixation at lower rate—Effect.—The agreed rent is the rent payable by a tenant to his landlord under the provisions of Section 5 of the Act unless it is varied in a suit for fixation of rent. The mere circumstance that the annual reasonable rent has been assessed by the District Magistrate at a figure lower than the agreed rent is not sufficient to entitle a tenant to pay the annual reasonable rent in place of agreed rent ⁸⁷.

Writ—Maintainability.—If the District Magistrate refuses to pass any order under the section a Writ of mandamus can be issued against him to fix the reasonable rent ⁸⁸.

4. It shall not be lawful for a landlord to take or receive for admitting a tenant to any accommodation any premium or other additional payment of any sort whatsoever, over and above the rent payable therefor under the provision of this Act.

86. *Raj Bahadur v. Babu Ram*, 1952 A L J 648=1952 A W R 102 (H C);
Sri Jagannath Manchanda v. District Magistrate Allahabad, 1952 A L J 43=1951 A 710.

87. *Mahech Chandra v. Brij Mohan*, 1952 A L J 86=1951 A W R 77 (H C).
Jagannath Manucha v. D. M. Allahabad, 1951 A 710=1952 A L J 43.

Legislative changes.—This section has been substituted by U. P. Act XVII of 1954.

Analogous Law.—Section 4 of the West Bengal Premises Rent Control Act XXXVIII of 1948 and Section 18 of the Bombay Rents, Hotel and Lodging House Rates Act 57 of 1947; Section 3 of the Bihar Act, Section 5 of the Delhi and Ajmere Act; and Section 8 of the Rajasthan Act.

Premium.—For the meaning see Section 2 (c). Section 103, Transfer of Property Act speaks of consideration for the lease being premium or rent. There may, however, be cases where the consideration may partly be premium and partly rent⁸⁹. Section 105 does not prohibit the taking of premium, but Section 4 of Act III, 1947 penalises it. This prohibition does not extend to the assignment of the unexpired portion of a lease⁹⁰.

The premium must be a consideration for the lease. If it is a price for the property itself which is to vest in the lessee on the termination of the lease, it is no premium even if it may be consideration for the grant of lease⁹¹. A builder agrees to erect houses on the land belonging to lessor at a specified cost, in consideration of a lease thereof being granted to him on completion, the money so spent is not premium⁹². When the purchase of any furniture or other articles is required as a condition of the grant of a tenancy of a dwelling house, and if the price exceeds the reasonable price of the articles, the excess will be treated as a premium. Municipal taxes agreed to be paid by the tenant are but a part of the rent, and are not in the nature of any premium or any other additional amount⁹³.

A tenant accepting money from a third person as an inducement to surrender tenancy cannot be said to have accepted a premium⁹⁴. Money paid to landlord to obtain his consent for sub-letting is not premium⁹⁵.

Rent fixed.—Means rent fixed by agreement, by [the District Magistrate under Section 3-A, by the civil court under Section 5 (4) or by the lessor under Section 5 (2).

Penalty for accepting premium.—Section 8 of Act III of 1947 provides a penalty of six months' simple imprisonment or fine upto Rs. 5,00/- or both. In view of Section 11 an attempt, or abetment of this offence is also punishable.

5. Control of Rent.—(1) Except as hereinafter provided in this section, the rent payable for any accommodation to which this Act applies shall be such as may be agreed upon between the landlord and the tenant.

(2) When the rent for any such accommodation has not been agreed upon or where, in the case of tenancies continuing from October 1, 1946, the landlord wishes to enhance the rent agreed upon, he may, by notice in writing, fix the annual rent at or enhance it to an amount not exceeding the reasonable annual rent:

Provided that the enhanced rent shall not exceed the rent, if any, payable on October 1, 1946, by more than 50 per cent thereof:

Provided further that nothing in this section will enable the landlord to enhance the rent in the case of leases for a fixed term during the continuance of the term unless so permitted by the contract of tenancy.

- 89. *In re, U. P. Electric Supply Co.,* 1934 C 803=61 C 556.
- 90. *Mason, Herring and Brooks v. Harris* (1921) I K B 653.
- 91. *United Provinces Electric Supply Co., In re* 1934 C 803.
- 92. *Stepney and Bow Educational Foundation v. Inland Revenue*

- Com., (1913) 3 K B 570.
- 93. *S. D. Seth v. D. D. Maharaj,* 1950 A 61=1949 A L J 451=1949 A W R 503 (H C).
- 94. *Remington v. Murchin*, (1921), 3 K B 104.
- 95. *Stratton v. Beaton* (1923) L C (J) 59 (Scoot.)

(3) If any accommodation to which the Act applies is let out after the commencement of this Act without the rent being agreed upon between the landlord and the tenant, the rent fixed under sub-section (2) shall be payable from the date of the commencement of the tenancy, and where the rent agreed upon is enhanced under the said sub-section, the enhanced rent shall be payable from the first day of the month next, after the month in which the notice is given.

(4) If the landlord or the tenant claims that the annual reasonable rent of any accommodation to which the Act applies is inadequate or excessive or that the reasonable annual rent declared by the District Magistrate under Section 3-A is not correct, or if the tenant claims that the agreed rent is higher than the annual reasonable rent, he may institute a suit for declaration or as the case may be for fixation of rent in the Court of the Munsif having territorial jurisdiction, if the annual rent claimed or payable is Rs. 500/-, or less, and in the Court of Civil Judge having territorial jurisdiction if it exceeds Rs. 500/- provided that the Court shall not vary the agreed rent unless it is satisfied that the transaction was unfair, and in the case of lease for a fixed term made before April 1, 1942, that the term has expired.

(5) Notwithstanding anything contained in sub-section (1) to (3), the rent fixed by the Court under sub-section (4) shall, so long as this Act remains in force, be payable by the tenant and from such date as the court may direct.

Explanation.—(1) Any accommodation let out on monthly basis shall also be governed by this section.

Explanation.—(2) For the purposes of sub-section (4) of this section and sub-section (2) of Section 6, in places where there is no Civil Judge having jurisdiction, Civil Judge shall mean the District Judge.

Legislative changes.—The original Section 5 was substituted by U. P. Act XLIV of 1948 and the sub-section (4) of this modified section has been substituted by U. P. Act XVII of 1954.

General.—This section lays down the rules for the control of rent. They are as follows :—

(1) The rent of the accommodation shall be such as may be agreed upon between the landlord and the tenant and if the tenant feels that the agreed rent is in excess of the annual reasonable rent, he may institute a suit for fixation of rent. But so long as this step is not taken, the agreed rent is the rent payable by the tenant ⁹⁶. It may be higher than the reasonable rent ⁹⁷.

(2) The landlord can fix the rent or enhance it by notice in the following cases :—

(a) If the rent has not been agreed upon he may by notice in writing fix the annual rent at an amount not exceeding the reasonable annual rent.

(b) If the tenancy continues from October 1, 1946, and the tenant is not a fixed term tenant, the landlord may enhance the rent to an amount not exceeding the reasonable annual rent provided that it does not exceed the rent, if any, payable on October 1, 1946.

96. *Mahech Chander v. Brij Mohan*,
1952 A L J 86—1953 A 612.

97. *Lallan Prasad v. Sharda Prasad*,
1953 A 316; *Kale Khan v. Rex*,
1950 A 417.

by more than 50%. This means that if the premises are assessed at Rs. 40, but the rent payable by tenant is Rs. 30 only; the reasonable rent would be Rs. 50, but in view of the first proviso to sub-section (2) of Section 5, it cannot be enhanced to more than Rs. 45 i.e. Rs. 30 plus 50% = Rs. 45 only.

(3) The landlord or the tenant may institute a suit for fixation of rent if the annual reasonable rent is inadequate or excessive, or the reasonable annual rent declared by the District magistrate under Section 3-A is not correct or the agreed rent is higher than the annual reasonable rent, and the Court may thereupon fix the rent in accordance with Section 6. The landlord "however" cannot bring a suit for the enhancement of agreed rent, as Section 5 (4) only permits him to sue for the enhancement of annual reasonable rent. Where the agreed rent is less than the annual reasonable rent, the landlord cannot bring a suit for enhancement of the annual reasonable rent without in the first instance enhancing the agreed rent to the figure of the annual reasonable rent⁹⁸. A tenant can succeed in getting the agreed rent reduced if he proves that the transaction was unfair. . or a landlord it is not necessary to prove that the agreed rent was the result of an unfair transaction, and he can succeed if he is able to show that the annual reasonable rent was inadequate⁹⁹.

Rent not agreed—Meaning.—One of the essentials of a lease under Section 105, T. P. Act is the presence of consideration, which must be either premium or rent. In the absence of such consideration there will be no lease¹, and as such no relationship of landlord or tenant would arise. There may be cases where the consideration is partly premium and partly rent, and although the premium may be settled, but the rent is to be fixed after the lessee obtains possession. Cases may also occur where the accommodation is allotted by the Rent Control Officer or the District Magistrate, and the tenant gets possession without the rent being agreed upon. In those cases "rent is not agreed upon" and the landlord is authorised to fix the rent under Section 5 (2) by notice, and if the premises are not assessed he can apply to the District Magistrate for fixation of rent under Section 3-A.

Leases for a fixed term—Meaning.—See Section 2(b) and the commentary thereon. Where a definite period is fixed as the term of a lease, it is known as a lease for a fixed term. In such cases the lease will automatically come to an end by afflux of time limited thereby (Section 111, clause (a), T. P. Act). But there may be cases in which there may be a renewal clause in the deed of lease. And if the lease does not state at whose option the lease is to be renewed, such option would *prima facie* be held to belong to the lessee². The period for which the lease is to be renewed, will be the same as the original period unless it is otherwise provided for, in the lease³. A clause for a perpetual renewal of a lease is valid⁴; but it must strictly be proved, otherwise such a covenant cannot be held to exist⁵. Section 5(4) applies to tenancies for fixed term as well⁶.

Notice by landlord—Effect.—Under Section 5(2) the landlord has been empowered to fix or enhance the annual rent, not exceeding the reasonable annual rent, by a notice. If such a notice has been given, the rent so fixed shall be payable from the date of the commencement of the tenancy in cases where tenancy was created after the commencement of this Act i.e., 1st October, 1946, without the rent being agreed upon, and in the cases of enhancement, from the first day of the month next after the month in which the notice is given (Vide Section 5(3)). The notice of course must be valid notice i.e., the amount

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| <p>98. <i>Seth Girdhari Lal v. Lala Sunder Lal</i>, 1954 A L J 65.</p> <p>99. <i>Seth Girdhari Lal v. Lala Sunder Lal</i>, 1954 A L J 65; <i>Jaswant Ram v. L. Kishen Chand</i>, 1954 A L J 220; <i>Bhem Sen v. Murari Lal</i>, 1953 A 238.</p> <p>1. <i>Arumugham v. Subramanian</i>, 1937 M 882; <i>Sita Ram v. Sarju Praead</i>, 25 O C 39.</p> <p>2. <i>Secretary of State v. Forbes</i>, 17 IC 180 (188).</p> | <p>3. <i>Jardine Skinner & Co. v. Rani Surai Soondari</i> 5, I A 164; <i>Harnarayan Singh v. Darshan Deo</i>, 1924 P 580=3 P 403; <i>Nava Kishore Das v. Madan Mohan Das</i>, 1924 C 346.</p> <p>4. <i>Gopalan Nair v. Kunhan Menon</i>, 30 M 300.</p> <p>5. <i>Sewak Ram v. Municipal Board, Meerut</i>, 1937 A 328; <i>Secretary of State v. Bai Bajpati</i>, 42 I A 229.</p> <p>6. <i>Kalyan Singh v. Kunwar Singh</i>, 1950 A 366.</p> |
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claimed must not exceed the reasonable annual rent. The liability to pay depends on the validity of the notice⁷. In a suit for arrears of rent or ejectment under Section 3(a) if it is proved that the notice 'fixing' the rent was not valid, as the amount fixed exceeded the reasonable annual rent the suit would fail. But if the notice is valid, the tenant is liable to pay the rent so fixed or enhanced, unless he files a suit under Section 5(4). A landlord, however has no right to enhance the rent by notice if there is no Municipal assessment⁸. However, Section 5(2) is not exhaustive; it does not bar other lawful ways to enhance the rent, and it is always open to the parties by an agreement between themselves to enhance it. This enhancement by mutual agreement would not be invalid because no notice as contemplated by Section 5 (2) is given⁹. An enhancement made by the landlord, which is below the reasonable annual rent, is no bar to a further enhancement, provided that it does not exceed the annual reasonable rent¹⁰.

Enhancement for Improvement.—There is no bar against an enhancement of rent by mutual agreement, as seen above, but there is no legal right under the Act, by which the landlord may enhance the rent for the improvements made in the premises. He may, however, file a suit under Section 5 (4) that the annual reasonable rent after the improvement is inadequate and if the court come to the conclusion that "improvement" has been made and the reasonable annual rent is inadequate, it may enhance the rent in view of the circumstances mentioned in Section 6. The "improvement" should not be in the shape of "normal repairs", which means such repairs as having regard to the age, character and locality of the house, would make it reasonably fit for the occupation of a reasonably-minded tenant of the class who would be likely to take it¹¹. As a matter of fact "repair" includes the replacement of parts¹². However, an expenditure of Rs. 150/- incurred by the landlord on the replacement of roofs of the house would not come within the term "normal repairs" but would amount to improvement¹³.

Enhancement—Same accommodation.—If the accommodation remains the same, fixing rent at an amount which is higher than the rent payable previously would amount to enhancement and would be governed by Section 5(2). Where there has been only ordinary repairs and no increase in accommodation fixing a higher rent is enhancement and if not justified under this sub-section it is in contravention of the Act¹⁴.

Transaction unfair—Meaning.—"Fair" means reasonable, honest and upright. These i. e., 'transaction unfair' occur in Section 3(l) (b) of Usurious Loans Act, and instead of referring the courts to considerations of general principles of equity, certain practical tests have been laid down in clause (d) of the Act for guidance. No such tests have been laid down in Act III of 1947, but the principles enunciated, there may be adopted for determining if a transaction is unfair. Section 3(2) (d) Usurious Loans Act lays down that in considering whether a transaction was substantially unfair, the court, shall take into account all the circumstances materially affecting the relation of the parties at the time of the loan or tenancy to show that the transaction was unfair, including the necessities or the supposed necessities of the debtor at the time of the loan so far as the same were known, or must be taken to have been known to the creditor; interest may of itself be a sufficient evidence that a transaction was substantially unfair. For the purposes of Act III of 1947 we may substitute 'lessee' for 'debtor' and 'rent' for interest. For a transaction to be unfair it is not necessary that the court should be able to ascribe some moral blameworthiness to the creditor (lessor) in the sense that he tricked the debtor (lessee) into entering into that bargain; it is open to the court to come to

7. *Somehswar Dayal Seth v. Shri Dwarka Dheesh Mahraj*, 1950 A 61 = 1949 A L J 451 followed in *B. Lalji Tandon v. Mst. M. G. Rufus*, 1950 A W R 42; *Naseem Beg v. Sunni Central Board of Waqfs*, 1955 A W R 407 (H.C.).
8. *Kalyan Singh v. Kunwar Singh*, 1950 A 366 = 1950 A L J 123 = 1950 A W R 98 (H.C.).
9. *Shri Lallan Prasad v. Shri Sharda Prasad*, 1952 A L J 751 = 1953 A

10. *Shrimati Narain Devi v. Hakim Mohammad Amin*, 1954 A L J 291 = 1955 A 259.
11. *Prondfoot v. Hart*, (1890) 25 Q B D 42.
12. *Lurcott v. Wakely*, (1911) 1 K B 905 (1919).
13. *Dr. S. Kopliwitch v. Narain Dass*, 1951 Punj 431.
14. *Kale Khan v. Rex*, 1950 A 417 = A L J 640 = 51 Cr. L J 1124.

the conclusion by taking into account the circumstances materially affecting the relations of the parties at the time of the transaction¹⁶. The fundamental conception underlying the word "unfair" is that the transaction has nothing unhand in it; that it is honest, just, equitable, and upright and the other party has not taken any undue advantage¹⁷. The mere fact that the agreed rent was much higher than the reasonable annual rent does not make the transaction unfair. When it is not shown that the landlord knew of the pressing circumstances under which the tenant agreed to take a building on an exorbitant rent and he took undue advantage of the difficulties it is impossible to say that the landlord acted unfairly. What is required to be unfair is the transaction and not the rent. Where there was no allegation of any pressure, due or undue, or of any fraud of any kind against the landlord, the transaction was above board; the parties being at arm's length from each other, it could not be said that the transaction was unfair, merely on the ground that the agreed rent was higher than the annual reasonable rent¹⁷.

"Unfair—Meaning".—The law has not prescribed any limits beyond which a landlord cannot fix rents. It is open to the landlord to fix his own valuation of the property¹⁸. If the contract is open and fair upon the face of it and is not tainted with fraud, bad faith, deception or oppression, it cannot be said to be

Suit Jurisdiction and Procedure.—This section contemplates suit by a landlord for fixation of rent on the allegation that the annual reasonable rent is inadequate. The tenant can sue in two cases; firstly, when the annual reasonable rent is said to be excessive and secondly, when the agreed rent is said to be higher than the annual reasonable rent¹⁹. It does not apply, nor there is any other provision in the Act where there is no agreed rent nor any rent fixed under Section 3-1 or 5 of the Act²⁰. Where a tenant has agreed to a certain rent and claims a reduction on the ground that the transaction was unfair, the Court has no jurisdiction to examine the correctness or the propriety of the assessment of the Municipal Board²¹. The Court obtains jurisdiction to fix rent if it finds that the reasonable rent is excessive or inadequate²². It has no jurisdiction to vary the rent which has been agreed upon unless it is satisfied that the agreement entered into was of an unfair nature²³. The forum will have to be determined from the amount alleged to be payable as fair rent²⁴. A suit for fixation of rent shall be filed in the Court of Munsif, having territorial jurisdiction if the annual rent claimed or payable is Rs. 500/- or less and in the Court of the Civil Judge having territorial jurisdiction if it exceeds Rs. 500/- In places where there is no Civil Judge having jurisdiction, the suit shall be instituted in the Court of the District Judge. In fixing the rent the Court shall follow the procedure laid down in Section 6; and the rent so fixed shall, so long as this Act remains in force, be payable by the tenant and from such date as the Court may direct. The decree or order so passed shall not operate as *Rer Judicata* between the parties or their representatives in interest in any suit or proceeding under any other law except as regards the rate of rent so fixed.

Enhancement by Agreement.—Section 5 (2) is not exhaustive in its nature.

- 15. *Nageswar Ayyar v. M. L. M. Ramanathan Chettair*, 1935 M 468; *Babu Ram v. Jagraj Singh*, 1930 A 76.
- 16. *Basarmal v. Durga Prasad*, 1951 A L J 263=1951 A W R 209 (H C). See also *Murli Singh v. Tika Ram*, 1950 A -01=1950 A L J 590; *Messrs Agarwal & Co. v. The City Board*, 1952 A L J 705
- 17. *M/s Agarwal & Co. v. The City Board, Dehra Dun*, 1952 A L J 750 =1953 A 175; *M/s Kishen Chand Hari Kishen Chand v. Dewan Chand Ghasi*, 1953 A 287.
- 18. *Sun Printing and Publishing Association v. Moors*, 183 U S 642.
- 19. *Federal Trade Commission v. Sinclair Refining Co.*, 261 U S 463;
- 20. *In re, Stuart Ex parte Katheurb*, (1893) 2 Q B 201.
- 21. *Raj Bahadur v. Babu Ram*, 1952 A W R 102 (H C)=1953 A 593.
- 22. *Jiwan Singh v. Mashar Khan*, 1952 A L J 258=1952 A W R 252.
- 23. *Kasdeo Das Wadhni Mai Advani v. S. Murtaza Ali Khan*, 1952 A L J 393=1953 A 82.
- 24. *Central Bank of India v. Narendra Lal*, 1950 A 52=1949 A L J 450; *Hari Ram v. Dr. C. K. C. Misra*, 1951 A 425.
- 25. *Murli Singh v. Tika Ram*, 1950 A 401=1950 A L J 590=1950 A W R 615 (H C).
- 26. *Raj Bahadur v. Babu Ram*, 1953 A 593.

It does not exhaustively lay down the ways in which the agreed rent can be enhanced. The enhancement that is contemplated by the subsection is enhancement by unilateral action or which can be imposed upon the tenant against his will. But it is always open to the parties by agreement between themselves to enhance the rent, no restriction on this right has been imposed by the Act²⁸.

Appeal.—In view of Section 6 (2) of the Act no appeal shall lie from any decree or order of the Munsif or the Civil Judge in a suit brought under the Act. See also commentary under Section 16.

Revision.—A revision is maintainable against the order passed under Section 5 (4) of the Act²⁷. Analogous words have been used in Section 23 (2), U. P. Agriculturists' Relief Act. In interpreting the words of Section 23 (2) it has been laid down that those words do not exclude a revision²⁸. The same view is taken in another case²⁹, and confirmed by a Full Bench decision³⁰.

Court-fee.—For the determination of rent, the court-fee payable under sub-section (xi) clause (h) of Section 7 of the U. P. Court Fees Act, is according to twice the amount claimed by the plaintiff to the annual rent.

For abatement or reduction of rent the court-fee payable would be under Section 7 (xi) (f) on the rent payable for the year next before the date of presenting the plaint. For the enhancement of rent by the landlord on the amount of rent of the accommodation payable for the year next before the date of presenting the plaint under Section 7 (xi) (b).

Sub-Tenant—Suit.—According to the definition given in Section 2 (g) "tenant" would include any person holding or occupying the accommodation as a sub-tenant. Therefore, a sub-tenant has also a right of suit under Section 5.

Claim for arrears with Fixation.—A claim for arrears of rent at the same rate at which fixation is sought can be joined to the claim for fixation of rent, and there is nothing illegal³¹.

5-A. (1) Where the tax referred to in clause (ii) of sub-section (1) Section 128 of the U. P. Municipalities Act, 1916, has been increased after July 1, 1946, in the case of any accommodation constructed before the said date, the landlord may on and from the commencement of the U. P. Control of Rent and Eviction (Amendment) Act, 1954, add, notwithstanding anything in this Act, or any order made thereunder, to the reasonable annual rent payable for the accommodation by the tenant an amount equal to one-third of the difference between the amount of the tax assessed before July, 1946, and the amount assessed after this date. The amount so added to the rent shall be payable by the tenant to the landlord along with rent.

(2) Where the question arises whether the tax referred to in sub-section (1) has increased in respect of any accommodation it shall be referred to the District Magistrate who shall determine the same.

Legislative changes—A new Section 5-A has been added to the principal Act by Act XVII of 1954, which came into force on 1st October 1954.

Scope.—Before the amendment Act XVII of 1954, a landlord was entitled to charge rent at the rate of "reasonable annual rent" from his tenant. "Reasonable annual rent" has been defined by Section 2 (f) and the main basis for determining it is the "Municipal assessment" in force on April 1, 1942. There have

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| <p>26. <i>Shri Lallan Prasad v. Shri Sharda Prasad</i>, 1952 A L J 751.</p> <p>27. <i>Narain Das Kasaudan v. Chatoo</i>, 1950 A 90=1949 A W R 159.</p> <p>28. <i>Lalta Singh v. Sridhar Shukla</i>, 1940 O W N 538=1940 O 404.</p> <p>29. 1941 O W N 669.</p> | <p>30. <i>Ram Autar v. Misri Mahabir Shukla</i>, 1942 O W N 549=1942 O 558. See also <i>Khazanchi Prasad v. Babu Ram</i>, 1949 A 559=1949 A L J 135=1949 A W R 159.</p> <p>31. <i>L. Bishambur Dayal v. Lala Girdhari Lal Odhaviji</i>, 1952 A L J 697=1953 A 158.</p> |
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been several revisions since April, 1942 and the assessments have been considerably enhanced. This section has been enacted to give relief to the landlord against this enhancement. They are authorised to enhance the rents from the date of the commencement of the Amending Act, 1954 i.e. from 30th September, 1954 to the extent of the reasonable annual rent plus one-third of the difference between the amount of tax assessed before July, 1946 and the amount assessed after this date.

Reference—There is nothing to indicate in the Act, as to who should refer the matter to the District Magistrate. The most natural meaning seem to be that in case of a dispute in any suit, whether the assessment has been enhanced, the court may refer the matter to the District Magistrate who shall determine it. This sub-section, however, seems to be unnecessary. Enhancement of assessment is a matter of record and can be proved by production of certified copies. This can be done even in the court trying the question, and it is incomprehensible why a reference to the District Magistrate has been made obligatory.

6. Procedure in suits.—(1) In determining the amount of annual or monthly rent in any suit under Section 5 the court shall take into account :—

- (a) In the case of accommodation constructed before July 1, 1946, the pre-war rent, the reasonable annual or monthly rent, the prevailing rent on the date of the suit for similar accommodation in the locality, the cost of maintenance and repairs of such accommodation and any material circumstance proved by the plaintiff or the defendant.
- (b) In the case of accommodation constructed on or after July 1, 1946, cost of land and the construction and of maintenance and repairs of accommodation, its situation, and any other circumstance which the court may consider material.

(2) No appeal shall lie from any decree or order of Munsif or the Civil Judge in a suit brought under sub-section (4) of Section 5 : provided that except as regards the rate of rent but no further the decree or order passed shall not operate as *res judicata* between the parties or their representative-in-interest in any suit or proceeding under any other law.

Legislative changes.—The original Section 6 was substituted by U.P. Act XLIV of 1948. In sub-section (1) the words ‘the cost of construction’ have been substituted by the words ‘cost of land and the construction’ by U.P. Act XVII of 1954.

General—In determining the rent in a suit under Section 5 (4), the court shall adopt the following procedure :—

- (1) In cases of accommodation constructed before July 1, 1954, the court shall take into consideration :—
 - (a) The pre-war rent.
 - (b) The reasonable annual or monthly rent,
 - (c) The prevailing rent on the date of suit for similar accommodation in the locality,
 - (d) The cost of the maintenance and repairs of the accommodation, and
 - (e) Any material circumstance proved by the plaintiff or the defendant.

Note :—“Similar accommodation” denotes that if the rent of a shop is under consideration only the rent of the shops in the locality would be taken into consideration, and if the rent of residential house is in question, the rent of the resi-

dential houses only should be considered, and regard should be had that the rent should be fair and not at concessional rate ³².

(2) In cases of accommodation constructed on or after July 1, 1946, the court shall take into consideration :—

- (a) The cost of land and the construction and maintenance and repairs of the accommodation,
- (b) Its situation, and
- (c) Any other circumstance, which the court may consider material.

Material Circumstances—Meaning.—There is nothing in the Act to show what is meant by "material circumstances"; and it so appears that the matter has been left to the discretion of the local authority. The principal facts which may be taken into consideration as 'material circumstances' can be divided under three heads :—

- (1) Amenities of situation.
- (2) Convenience of situation.
- (3) Constructional design and internal fittings.

Amenities of Situation.—In considering the amenities of situation due weight has to be given to environmental amenities. Areas reasonably free from congestion and industry have to be differentiated from the slum and industrialised parts of the town. Houses on the main road and fronting open spaces, corner-houses, abutting on major roads have to be treated differently from those in lanes and with no frontage. The convenience of shopping centres and the proximity of better class residential houses are also other factors worthy of consideration. These are merely random examples of the amenities of situation for charging higher rates of rent. Similar in principle would be the factors for charging lower rates, where houses were built at inconvenient or costly distances from central urban areas.

Convenience of Situation.—In a great number of towns, there is a centrally situated industrial and commercial area. The distance from this centre in many cases may be a determining factor in fixing higher or lower rates of rent. Not only the cost of transport but the wastage of time and inconvenience suffered, is of utmost importance. To some extent there may arise a struggle between the amenity and convenient factors. In so far as it may be argued that attractive sites commanding open and healthy rural surroundings are usually more remotely located, discrimination may act in conflicting ways. Rent could either be increased because of the benefits accruing from the situation, or reduced because of the time and money spent in travelling. Possibly these two considerations may cancel out. But in most cases the type of tenant concerned was the deciding factor. Differentiation according to amenities is plainly more applicable to tenants, who have been free in the choice of their houses. To them the extra cost of travelling is of little or no significance. This may not apply to such tenants as are frequently left with no alternative but to accept the first house which came along, and usually had little margin of income to spare. Cheapness of living was most vital to him and the question of travelling expenses was of especially pressing importance.

Constructional Design and Internal Fittings.—The inevitable march of scientific progress has led to the utilisation of new building materials and to better and more attractive internal fixtures and fittings. Variation in rents may be made on differential advantages of this kind. Extra rent may also be charged for brick-built outhouses, for bay windows, or first floor bathrooms. Closely akin to this may be the grading of rents of flats according to floor level. This grading may be based upon the conception of relative convenience or comfort of living on different floors. Where blocks of flats extend three storeys or more in height, tenants of the upper floors are obviously put to great inconvenience in toiling up and down stairs, and this inconvenience may be taken into consideration in grading rents.

Costs of Repairs.—No criterion has been laid down for assessing the costs of repairs, nor any definition of 'repairs' has been given. In English Law in the Increase of Rent and Mortgage (Restriction) Act, 1920, repairs mean any repairs

required for the purpose of keeping the premises in good and tenable condition, and where the landlord is responsible for the whole of the repairs he is allowed an addition of 25% of the net rent. In India different methods for estimating the allowance to be made for repairs and maintenance have been adopted, but the fairest and most accurate method of estimating repairs is to take a percentage on gross rent of the premises. In average cases a fair deduction to make would be five per cent of the gross rent for internal repairs and five per cent for external repairs.³³

Change in Language—Effect.—Section 6 (1) (a) uses the word : “any material circumstance proved by the plaintiff or the defendant,” while Section 6 (1) (b) uses ‘any other circumstance which the court may consider material’. The omission of the word ‘proved’ must be deemed to have been intentionally made, and any change in the language is an indication of the change of intention.³⁴ Thus clause (b) appears to give to the court a wide discretion than clause (a). In the latter case the material circumstance have to be proved, while in the former case, the court in the exercise of its wide discretion takes into account circumstances which it may consider material although no proof about them has been given either by the plaintiff or the defendant. But this discretion must be judicially exercised and not arbitrarily.

Appeal.—Section 6 (2) prohibits an appeal from any decree or order of a Munsif or Civil Judge in a suit under Section 5 (4), but it was never intended to apply to a suit other than a suit instituted under Section 5 (4) and in that view of the matter a decree passed in any suit not falling under that section is appealable.³⁵

7. Control of letting.—(1) (a) Every landlord shall, within 7 days after an accommodation becomes vacant by his ceasing to occupy it or by the tenant vacating it or otherwise ceasing to occupy it or by termination of a tenancy or by release from requisition or in any other manner whatsoever, give notice of the vacancy in writing to the District Magistrate.

(b) Every tenant occupying accommodation shall within 7 days of vacating of such accommodation or ceasing to occupy it give notice thereof in writing to the District Magistrate.

(c) The notice given under clause (a) or (b) shall contain such particulars as may be prescribed.

(2) The District Magistrate may by general or special order require a landlord to let or not to let to any person any accommodation which is or has fallen vacant or is about to fall vacant.

(3) No tenant shall sub-let any portion of the accommodation in his tenancy except with the permission in writing of the landlord and of the District Magistrate previously obtained.

(4) The District Magistrate may, on application made to him by the landlord, require a prospective tenant of any accommodation in respect of which an order is made under this section to pay to the landlord an advance rent equal—

(a) to one month's rent where the accommodation is to be let on a monthly basis, and

(b) to one-half of the yearly rent where the accommodation is to be let on a yearly basis.

33. *The Principles and Practice of Valuations* by John A Parks page 64.

34. *Maxwell on the Interpretation of*

Statutes

Fifth Edition, page 59.

Khuzanchi Prasad v. Babu Ram and others, 1949 A 559=1949 ALJ 133.

Explanation.—For purposes of this section the word “let” shall include the word “sub-let.”

Legislative changes.—The original Section 7 was substituted by U. P. Act XXIV of 1952.

Scope.—This section requires the landlord to give intimation to the District Magistrate when an accommodation has fallen vacant. The question whether the accommodation which fell vacant was required for personal use by the landlord is immaterial and intimation of falling vacant has to be given³⁶. Where a tenant having no need for the accommodation introduced another therein and intimated the same to the landlord trusting that the other may be treated as the tenant thereafter, obtaining the allotment in his favour from the Rent Controller, if necessary, and the landlord sent a copy of the letter so received by him to the Rent Controller adding that he had no objection if the accommodation was allotted to that other, the landlord would be deemed to have performed his duty and there was no letting by the landlord³⁷. The amendment made in the section by the Amendment Act No. XXIV of 1952 makes it obligatory on every landlord to give notice within 7 days of the falling vacant of the accommodation to the District Magistrate even if he ceases to occupy it.

General or Special Order.—There is no definition of these orders. But it appears that ‘general order’ would mean an order addressed to the landlords in general, while an ‘special order’ would mean an order addressed to any particular landlord.

Landlord—meaning.—Landlord has been defined in Section 2 (c) and is wide enough to include a tenant in relation to a sub tenant; the only criterion is that the rent is payable to him in respect of any accommodation. In case a sub-tenant vacates the premises, it is the duty of the tenant to inform the District Magistrate that the premises have fallen vacant, as in such a case the tenant shall be deemed to be a landlord.

Accommodation falling vacant—meaning.—The definition of landlord in Section 2 (c) would show that the person who is required to give intimation that an accommodation has fallen vacant is a person to whom rent is payable by a tenant. The owner of any accommodation is the person in law entitled to the rent of the same, if and when it is let out on rent, and there can be little doubt that the rent is payable to him. The fact that the accommodation has or has not been previously let out on rent is not relevant for the purposes of interpreting the term landlord. The previous occupation need not necessarily be by a tenant. It might have been by the owner himself or by his guest or anybody else without payment of rent. The words “falling vacant” do not, therefore, mean that the accommodation had been occupied by a tenant and then vacated³⁸. An exchange of houses between two landlords, amounts to vacancy³⁹. However, if an accommodation is occupied by a tenant, vacancy would mean the vacancy of the entire accommodation in the tenancy of any person and cannot refer to the tenants not using, for the time being, part of the accommodation. The disuse by a tenant of a portion of the accommodation does not amount to the tenant’s vacating that portion⁴⁰. “Vacant” has now been defined by Section 2 (h), but it is not exhaustive. A landlord selling his house to another, and delivering possession to him, cannot be said to have vacated it⁴¹. The word “vacant” does not mean that the tenancy should determine. It means that the tenant should have ceased to occupy the accommodation with the intention of not coming back to it again, no matter, whether his liability to the landlord for payment of rent has ceased or not⁴².

Licences and Employees.—The Section as framed presupposes a relationship of landlord and tenant. If the person occupying the premises is not a tenant

36. *Ibid.*

37. *Halwasiya v. The State*, 1952 A L J 376.

38. *Puran Chandra v. Rex*, 1951 A 628=1951 A W R 149 (H C)=52 Cr L J 896.

39. *E. B. Nagaratanammal*, 1950 M 432.

40. *Brij Kishore v Rent Control and Eviction Officer*, 1954 A L J 172.

41. *Lachman Das v Rent Control and Eviction Officer*, 1953 A 458.

42. *Mahabir Prasad v. Kewal Krishna*, 1953 A 441=1953 A L J 34.

but a mere licensee, the owner of the premises would not be a landlord, and if the licensee vacates the premises the accommodation cannot be deemed to have fallen vacant, as a licensee is not a tenant¹. A caretaker of the accommodation without any remuneration except that he was to have the use of the offices and upper bedrooms free of rent would not be a tenant². This was a case of occupation by servant. For similar cases; where schoolmaster by virtue of his office occupied a house belonging to the education authority, who paid all the rates thereon, the annual value being deducted from his salary³; where the defendant was employed by the plaintiff to take charge of a garage, and while so employed he was allowed to occupy a dwelling house belonging to the plaintiffs adjoining their garage rent free⁴. Where a farm labourer was employed on terms of so much a week and a cottage⁵; where Macaulay occupied a house by virtue of his employment as a gardener⁶. The general principle is that if a servant is required to live in a certain house for the better performance of his duties he is not a tenant⁷. But if the true position is that he is allowed to occupy the premises by way of reward or part payment of his services then he is a tenant. In case of a tenant, the accommodation cannot be deemed to have fallen vacant, unless the interest of the tenant ceases. A lease is a transfer of right to enjoy the property demised. If it is a conveyance by the owner of an estate to another of a portion of his interest therein. The estate transferred to the lessee is called the leasehold, while the estate remaining in the lessor is called the reversion. As long as the leasehold subsists, the owner has no right to take possession of the property much less a right to create another leasehold. It is only on the reversion of the leasehold rights to the owner that the accommodation can be said to have fallen vacant. Thus, if a sub-tenant vacates the premises it fails vacant to the tenant and not to the owner.

Tenant Sub-letting—Effect.—A lease is the outcome of the rightful separation of ownership and possession. The essential characteristic of a lease is that the subject is occupied and enjoyed, but the corpus of the subject does not disappear by user. Before the lease the owner had the right to enjoy possession of the land, but by the lease he excludes himself during its currency from that right⁸. According to Section 108 (j) T. P. Act, this right of lessee is transferable by sub-lease. Section 7 (3) however, restricts this right and a tenant is not permitted to sub-let any portion of the accommodation in his tenancy except with the permission in writing of the landlord and the District Magistrate previously obtained. A contravention of this provision would not only make the tenant liable to prosecution under Section 8, but also to ejectment under Section 3 (e). If an accommodation was sub-let before October 1, 1946 and falls vacant, the tenant cannot sub-let it again after the said date without the permission of the landlord⁹.

Landlord's duty to intimate.—This Section makes it obligatory on a landlord to give notice of the vacancy within 7 days of the accommodation falling vacant. Where the landlord has given the notice, he has performed the duty imposed on him by the Section. There is no duty cast on him to take measures against an squatter for his ejectment either forcibly or through court¹⁰. The intimation has to be given irrespective of the fact that the landlord wants to occupy it himself or intends to let it out or not¹¹. This however, does not mean that the landlord cannot occupy the accommodation as and when it falls vacant, but he must hand over possession to the allottee, when an allotment order has been passed¹². The landlord's right to occupy the premises, falling vacant, is subject to the orders of the District Magistrate¹³, who has powers to allot even before the intimation is given by the landlord¹⁴.

31. *Southgate Borough Council v. Wasten* (1944) K.B. 541=171 L.T. 25.
32. *Bute v. Prenderleith* (1921) S.C. 281.
33. *Pollock v. Assessor Inverness*, (1923) S.L.T. 282.
34. *National Steam Car Co. v. Barnham* (1919) 122 L.T. 315.
5. *Smith v. Hughes*, 189 L.T.J.O. 399.
6. *Wallace v. Macaulay*, (1923) S.L.T. (Sheriff's Court) 120.
7. *H. O. Halwasiya v. State*, 1951 A 442.
8. *Anwari's Bepari v. Jamini Lal*

9. *Roy*, 1940 C 89.
9. *Messrs George Oakes Ltd., v. The Chief Judge Small Causes Court, Madras*, 1951 M 222.
10. *D. P. Halwasiya v. The State*, 1952 ALJ 376=1953 A 45.
11. *Rez v. Nensukh Das*, 1949 ALJ 77=1949 A 345.
12. *Chote Lal v. District Magistrate Moradabad*, 1952 ALJ 537.
13. *Jangi Lal v. Rent Control and Eviction Officer*, 1954 A 126=1953 ALJ 184.
14. *Badri Das v. The D.M. Ghazipur*, 1955 ALJ 208.

Order of Allotment—Effect.—An order of allotment by a District Magistrate, is nothing else but an order under Section 7 requiring the landlord to let the house to a certain person¹⁵. This order by itself does not create any tenancy. It is merely a 'directory order' to the landlord to lease out the premises to the person in whose name an allotment has been made. Such a person shall be deemed to be a 'prospective tenant'. The landlord may either enter into an agreement with this tenant direct after settling the terms of the tenancy or apply to the District Magistrate that the tenant may be ordered to pay to him one month's rent if it is to be let on monthly basis or one half of the yearly rent if it is to be let on yearly basis. On the completion of the agreement or on payment of rent, the 'prospective tenant' becomes a 'tenant' and acquires the leasehold rights in the premises. If the landlord contravenes this order he would be liable under Section 8, and if any person in contravention of the order occupies the accommodation or any part thereof, the District Magistrate may proceed against him under Section 7-A. For the realisation of arrears of rent from such tenant and for his ejection special procedure has been provided by Section 7-B. A question of some difficulty would arise in case where sub-tenancy is created by allotment and the landlord does not accord his permission to it. Under Section 3 (e) if the sub-letting is without his permission the landlord can eject the tenant and with him sub-tenant would also be dispossessed. There is nothing in the Act to meet this contingency. The allotment order can be made only with respect to vacant accommodation, because "such" would refer to vacant accommodation only. This section comes into play only when the whole accommodation is or has fallen vacant and therefore when an order of allotment is made prior to the whole accommodation falling vacant, it is invalid and has to be quashed¹⁶. If, after notice of vacancy, no allotment is made within thirty days the landlord has a right to nominate his own tenant, and the Rent Control and Eviction Officer has either to make allotment in favour of some other person forthwith for reasons to be recorded in writing or to make allotment in accordance with the wishes of the landlord. If he does not forthwith make the allotment, he is bound to make an order of allotment in favour of landlord's nominee, otherwise his order would be illegal¹⁷. Where an order merely says that a shop will be allotted, it is not an order of allotment¹⁸. If the allotment order is not addressed to the landlord it is ineffective¹⁹.

If a portion of the accommodation falls vacant and the other portion is in occupation of the landlord, the District Magistrate before making the allotment must consult the owner, and make the allotment, so far as possible in accordance with his wishes—(Rule 7).

Housing Committee.—Housing Committees have no existence in the eyes of law. They are merely advisory bodies and have no authority to allot any accommodation to any person. They have been formed of official and non-official members, to assist the District Magistrate or the Rent Control Officers in making allotment. They do not come within the definition of District Magistrate, and orders of allotment passed by them would not be effective or legal. However, orders passed by the District Magistrate or the Rent Control Officer in consultation with the committee would be legal and binding²⁰.

Tenant's duty on vacating.—Under Section 7 (1) (b) a tenant occupying any accommodation about which an order under Section 7 (1) (a) has been made shall within seven days of his vacating the same give intimation thereof in writing to the District Magistrate or such officer as the District Magistrate may appoint in this behalf. This would apply to a 'prospective tenant' as well. If in pursuance to an allotment order, a 'prospective tenant' occupies the premises and before any agreement with the landlord or payment of rent, he vacates it, he must give the required intimation, as according to the definition of 'tenant' in Section 2 (g) he is a person by whom rent would be payable for the accommodation occupied by him for the time being. Section 7 (b) makes it incumbent on every tenant occupying an accommodation, irrespective of the fact, whether any order

- 15. *Ram Lakan Lal v. Additional Commissioner*, 1954 A 606.
- 16. *Badri Prasad v. The District Magistrate*, 1952 A L J 213.
- 17. *Jang Bahadur v. D. M. Bararas*, 1954 A L J 225=1954 A W R 222 (H C).

- 18. *Ram Lakan Lal v. Additional Commissioner*, 1954 A 606.
- 19. *Chandra Bhan v. Rent Control and Eviction Officer*, 1954 A 6=1953 A L J 440.
- 20. *Gaya Prasad v. D. C. Sultanpur*, 1955 A L J 188.

under Section 7 (1) (a) has or has not been made, to inform within seven days of his vacating the accommodation, the District Magistrate or such other officer as the District Magistrate may appoint in this behalf, that he has vacated the premises.

Monthly or yearly rent—Meaning.—The ‘monthly’ or ‘yearly rent’ as mentioned in Section 7 (2) must mean the rent agreed upon between the landlord and tenant, or in the absence of any such agreement, the reasonable annual rent which may become payable under Section 3-4 or Section 5. After the allotment order if there is no agreement between the landlord and tenant with respect to rent, the simplest method is to give notice to the tenant under Section 5 (2) and then apply to the District Magistrate under Section 7(2) because according to Section 5, the rent payable under the Act is only such as has been agreed upon or determined under that section. The ‘monthly’ and ‘yearly’ rent as used in Section 7(2) must mean the monthly or yearly rent payable under the Act.

Landlord's Wishes—When consulted.—Rule 7 framed under Section 17 of the Act, provides that when a portion of accommodation falls vacant and the owner is in occupation of another portion, the District Magistrate shall, before making the allotment order, consult the owner and shall so far as possible make the allotment in accordance with his wishes. This rule, therefore, applies only when one part of premises is in occupation of owner, and the other part is let out to tenant. It provides that the wishes of the landlord are to be consulted so that the unwelcome or a troublesome tenant may not be forced on the landlord and thus cause him inconvenience²¹. However, Rule 7 does not cover cases where the landlord shares the accommodation with a tenant on being allotted to him²². Rule 6 requires the District Magistrate to permit the landlord to occupy an accommodation which has fallen vacant or is likely to fall vacant if it is *bona fide* needed by him. If the Rent Control and Eviction Officer does not apply his mind to the needs of the landlord, the order of allotment is vitiated²³. But if the Rent Control and Eviction Officer is satisfied that the owner does not want to live in the accommodation himself, but wants to let it out to a person surreptitiously, he will be justified in allotting the vacant portion to someone else²⁴.

Restrictions—if Ultra Vires.—It cannot be said that the provisions of this section contravene Article 19 (1) (f) of the Constitution of India, and the restrictions imposed are unreasonable²⁵. The discrimination between houses built before 1st July 1946 and those built after that date cannot be said to be unjust, and there is no violation of the equality clause under Article 14 of the Constitution²⁶. This Act may not have been passed under item No. 9 of List II relating to the compulsory acquisition of land, but there is no reason why it cannot come under Item No. 21 of List II which gives the Legislature power to enact laws regulating the relationship between landlord and tenant²⁷. The restrictions on the right of landlord to occupy himself are reasonable and in the interest of the general public²⁸.

7-A. (1) Where in pursuance of an order of the District Magistrate under sub-section (2) of Section 7, the vacancy of any accommodation is required to be reported and is not reported, or where an order requiring any accommodation to be let or not to be let has been duly passed under sub-section (2) of Section 7 and the District Magistrate believes or has reason to believe that any person has in contravention

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| <p>21. <i>Jangi Lal v. Rent Control and Eviction Officer</i>, 1954 A 125; <i>Bhakat Shremani v. Rent Control and Eviction Officer</i> 1954 A 118=1953 A L J 553; <i>Smt. Ram Katori v. The Rent Control and Eviction Officer</i>, 1953 A 543.</p> <p>22. <i>Ram Gopal v. State of Uttar Pradesh</i>, 1953 A 438=1953 A L J 54.</p> <p>23. <i>Ram Narain Tewari v. Ram Chandra Sharma</i> 1953 A 354.</p> <p>24. <i>Srimati Ram Katori v. The Rent Control and Eviction Officer</i>,</p> | <p><i>Agra</i>, 1953 A 543.</p> <p>25. <i>Raman Das v. The State</i>, 1952 A 703.</p> <p>26. <i>Ibid.</i></p> <p>27. <i>Raman Das v. The State of U. P.</i>, 1952 A L J 208 (F B), 1952 A 703.</p> <p>28. <i>Prem Shankar Pandey v. U. P. Provincial Co-operative Bank</i>, 1952 A L J 520=1953 A 51. See also <i>S. B. Trading Co. v. Shiam Lal Ram Chandra</i>, 1951 C 539; <i>Inder Prasad Goenka v. N. R. Sen</i>, 55 C W N 719; <i>Gulab Chand Bagricha v. Emperor</i>, 1949 N 414.</p> |
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of the said order, occupied the accommodation or any part thereof, he may call upon the person in occupation to show cause, within a time to be fixed by him, why he should not be evicted therefrom :

Provided that no order under this section shall be passed if the District Magistrate is satisfied that there has been undue delay or it is otherwise inexpedient to do so.

(2) If such person fails to appear in reply to the notice served under sub-section (1) or, if he appears but fails to satisfy the District Magistrate that the order under sub-section (2) of Section 7 was not duly passed and that he is entitled to remain in occupation of the accommodation the District Magistrate may, without prejudice to any other action which may be taken against him under this Act or any other law for the time being in force, direct him to vacate the premises within a period to be specified.

(3) Upon the making of the order under sub-section (2), the person against whom the order is made and every person claiming under him shall vacate the accommodation. If the accommodation is not vacated within the time allowed or such extended period, as the District Magistrate may grant, the District Magistrate may evict or cause to be evicted the person or persons and use such force as may be necessary for carrying out the order, and also put the person, entitled under sub-section (2) of Section 7, in occupation of the accommodation.

(4) No appeal shall lie from any order passed by the District Magistrate under this section, but the Commissioner may revise the said order if he is satisfied that the District Magistrate has acted illegally or with material irregularity or has wrongly refused to act and may make such order as he thinks fit.

Legislative changes.—New Section 7-A was added to the principal Act by U. P. Act XXIV of 1952.

General.—This section was first introduced by Ordinance 9 of 1948 published in the *Gazette* dated 16th October, 1948. It provides a speedy remedy for contravention of the orders under Section 7 and unauthorised occupations of accommodations. The District Magistrate may call upon the person in occupation why he should not be evicted therefrom, and if he fails to satisfy the District Magistrate that the order under Section 7(1) was not duly passed and that he is entitled to remain in occupation, the District Magistrate may ask him to vacate the premises within specified time, and in case of disobedience, to evict him and put the right person in possession thereof. Orders under this section are not appealable, but a revision may lie to the Commissioner.

Appeal—Sub-section 4 of Section 7-A clearly lays down that no appeal shall lie from any order by the District Magistrate under this Section.

Revision—Orders passed under Section 7-A are revisable by the Commissioner on the ground (1) that the District Magistrate has acted illegally (2) that the District Magistrate has acted with material irregularity or (3) that the District Magistrate has wrongly refused to act. The Commissioner can act *suo motu* without any application to it by the party interested²⁹. The grounds of revision are different from those given in Section 115, C. P. C. There is no question of jurisdiction involved in revisions under Section 7-A(4).

Illegality or Irregularity—Meaning.—An ‘irregularity’ is want of adherence to some prescribed rule or mode of proceeding, and consists in omitting to do something that is necessary for the due and orderly conducting of a suit or doing it in an unreasonable time or improper manner. An “illegality” on the other

29. *Somasundaram Pillai v. Muthumaneeka Naddar*, 1932 M 714.

hand, is properly predicate of radical defects only, and signifies that which is contrary to the principles of law as distinguished from mere rules of procedure. It connotes a complete defect in jurisdiction or proceedings.

Occupation—Meaning.—Occupation includes possession as its primary element, but it also includes something more. Legal possession does not, of itself constitute an occupation. The owner of vacant house is in possession, and may maintain trespass against anyone who invades it; but as long as he leaves it vacant he is not in occupation nor he is an occupier³⁰. There is a distinction between "occupation" and "possession" because there may be a legal or constructive possession, where there is no actual occupation. The words "has occupied" used in the section may be interpreted to include the continuance of occupation by a landlord after the passing of the allotment order³¹.

If a person occupies the premises without an allotment order after the District Magistrate has passed an order under Section 7 (1) (a), such occupation would be in contravention of the provisions of Section 7-A³².

Believes or has reason to believe.—'Believe' has been interpreted, as a word, which is much stronger than suspect and involves the necessity of showing that the circumstances were such that a reasonable man must have felt convinced in his mind that the alleged fact is correct. In other words it means satisfaction. It is not possible, to lay down any hard or fast rule upon which the District Magistrate ought to be satisfied³³.

Duly passed—Meaning.—Section 7-A (1) requires that an order requiring any landlord to let or not to let the accommodation must have been duly passed, before any action under the section can be taken. 'Duly passed' means an order which is consistent with the provisions of Section 7(1). If the order is not duly passed the District Magistrate's jurisdiction to proceed under the section is ousted³⁴. For example, prior to the amendment, the pre-requisite of an order of allotment was that accommodation must be vacant and if the District Magistrate passed such an order with respect to an accommodation which was not vacant, the order was not valid and was not to be deemed to have been duly passed³⁵.

Requisites for action under Section 7-A.—There are three requisites for proceedings under this Section; (1) the order under Section 7(1) must have been duly passed, (2) there must not have been undue delay and (3) to take proceedings under the section may not be inexpedient. The last two requisites are discretionary with the District Magistrate. What is 'undue delay' and when it is 'inexpedient' to take action will depend on the circumstances of each case.

Before evicting an occupant a notice has to be given to show cause within a specified period why action under the section should not be taken against him. If an owner is in occupation of the premises and no opportunity is given to him, rather resort is had to the use of police and the owner is forcibly ejected, the action would be regarded as unwarranted³⁶.

Call Upon—Meaning.—In Section 7-A (1) there is no procedure provided how the person in occupation is to be 'called' to show cause why he should not be evicted from an accommodation. Reading sub-section (1) with sub-section (2) it would appear that a notice has to be served on the occupant. An actual notice, to constitute a binding notice, must be a definite information given by a person interested in the thing in respect of which the notice is issued; for it is a settled rule that a person is not bound to attend to vague rumours or statements made by strangers³⁷.

- 30. *R. v. St. Paneras*, 2 Q B D 588.
- 31. *Chotey Lal v. D. M. Moradabad*, 1952 A L J 537=1952 A 913=1952 R D 349 (H C)=1952 A W R 507 (H C); *Jangilal v. R. C. E. O. Allahabad*, 1954 A 126=1953 ALJ 584=1953 A W R 540 (H C); *Shri Badri Dass v. D. M. Ghazipur*, 1955 A W R 272.
- 32. *Abdul Tamiz v. State*, 1955 AWR 59 (H C).
- 33. *Kulada Kenkar v. Danish Mir*, 33 C 38; *Asghari Khanam v. Emperor*, 1935 O 316.

- 34. *Chandra Bhan v. R. C. E. O. Agra*, 1953 A L J 443=1954 A 6=1953 A W R 434 (H C); *Gaya Prasad v. D. C. Sultanpur*, 1955 A L J 188.
- 35. *Shri Chandra Bhan v. Rent Control and Eviction Officer, Agra*, 1953 A L J 44=1953 A W R 434 (H. H.).
- 36. *Badri Dass v. D. M. Ghazipur*, 1955 A L J 208.
- 37. *Ashiq Husain v. Chaturbhuj*, 50 A 328=1928 A 159.

7-B.—(1) When any tenant, who is in occupation of an accommodation in pursuance of an order made under the provisions of sub-section (2) of Section 7, is in arrears of rent or any instalment thereof (where it is payable in instalments) for more than three months, the landlord may make an application to the Munsif having territorial jurisdiction for an order of ejectment of the tenant from the accommodation.

(2) (a) The application shall contain the following particulars :—

- (i) The name of landlord and where there are more than one landlord, the names of the landlords.
- (ii) A sufficient description of the accommodation from which tenant is to be evicted, or a copy of the order of allotment.
- (iii) The arrears claimed and the rate at which they are claimed.
- (iv) Where the rate of rent has already been determined in a suit under sub-section (4) of Section 5, the fact that it has been so determined.

(b) The application shall be verified in the manner prescribed for the verification of plaint in the Code of Civil Procedure, 1908.

(3) On the making of the application under sub-section (1), the Munsif shall, without unnecessary delay, serve by registered post or otherwise a notice on the tenant asking him to pay the amount of arrears within 15 days of the service thereto, or to show cause within the said period why an order directing him to be evicted from the accommodation be not passed against him.

(4) If, within the time allowed in the notice under sub-section (3) the tenant pays into Court the amount mentioned therein, the Munsif shall dismiss the application and direct the amount deposited to be paid to the landlord in satisfaction of the arrears and shall make such order as to costs as may appear to him to be just and proper.

(5) Where the tenant has been duly served with the notice under sub-section (3) but has failed to deposit the amount mentioned within the time allowed therein and he does not file any objection, the Munsif shall, notwithstanding anything in the Transfer of Property Act, 1882, make an order directing that the tenant be evicted from the accommodation and pay the costs of the application.

(6) As soon after as the order under sub-section (5) has been passed, the Munsif shall forward a copy of the order to the District Magistrate for carrying out the same, and, thereupon, the District Magistrate shall cause the tenant to be evicted from the accommodation.

(7) If the tenant appears in reply to the notice under sub-section (3) and files an objection, other than an objection as to costs of these proceedings, the Munsif shall inform the applicant that he may, subject to payment of the court-fee within such time, as may be specified have the application treated as a plaint in a suit for recovery of rent alone :

Provided that the tenant shall not be permitted to file any objection, unless he has deposited in Court the amount mentioned in the notice or furnishes security to the satisfaction of the Court.

(8) If the applicant pays the necessary court-fee within the time allowed, the application shall be treated as a plaint and the proceedings as a suit. If the court-fee is not deposited as aforesaid, the proceeding shall be quashed without prejudice to the right of the applicant to file, subject to the law of limitation, a separate suit for ejectment and recovery of arrears.

(9) In carrying out an order sent to him for execution under sub-section (5), the District Magistrate may use or cause to be used such force as may be necessary, and nothing in the Code of Civil Procedure, 1908, shall apply to such proceedings.

(10) Notwithstanding anything contained in this Act, or in any other law for the time being in force, the order under sub-section (5), or anything done under sub-section (6), shall not affect the question of title to the property to which it relates.

(11) Whenever the Munsif finds that the application by the landlord or the objection by tenant was frivolous or vexatious, he shall award special costs to the tenant or the landlord, as the case may be, upto the amount of the claim.

(12) Any notice issued under sub-section (5) shall be served on the party by delivering a copy thereof to him or, where the Munsif is satisfied that the party is evading service, then by registered post and by beat of drum.

(13) This section will come into operation on the expiry of three months from the commencement of the Uttar Pradesh (Temporary) Control of Rent and Eviction (Amendment) Act, 1948.

(14) If a suit for determination of rent under sub-section (4) of Section 5 has been filed at any time before the coming into force of this section, in respect of any accommodation, the proceedings under this section in respect of such accommodation shall be stayed until the suit is decided when the proceedings may be reviewed and shall be disposed of in accordance with sub-sections (3) to (11) as may be applicable.

Legislative Changes.—New section 7-B was added to the principal Act by U. P. Act XXIV of 1952. In Sub-section (1), the words "in arrears of rent or any instalment thereof (where it is payable in instalment) for more than three months", have been substituted for the words "in arrears of rent for more than three months" and in sub-section (3) the words "serve by registered post or otherwise a notice" have been substituted for the words "serve notice" by U. P. Act XVII of 1954. The provisos to sub-section (6) have been omitted by U. P. Act XVII of 1954.

General.—This Section was introduced by the Amending Act 44 of 1948 [and came into force from 16th March, 1949 i. e., on the expiry of three months from the commencement of the U. P. (Temporary) Control of Rent and Eviction (Amendment) Act, 1948 which came into force on 15th December, 1948. It is merely a permissive Section and provides a speedy mode for the realisation of arrears and ejectment of such tenants as are in occupation of an accommodation in pursuance of an order under Section 7 (1). It has no application in case of other tenants.

Verification.—The application under Section 7-b (2) shall be verified in the manner prescribed by Order 6, Rule 15, Order 27 (Government), Order 29, Rule 1^a (Corporations), Order 30, Rule 1 (Firms) of the Code of Civil Procedure.

S. 7-B] U. P. (TEMP.) CONTROL OF RENT AND EVICTION ACT, 1947 701

Want of verification of pleadings does not have the effect of making the application void. It merely amounts to an irregularity, which does not affect the merits of the case and can be rectified by permitting the party concerned to make good the defect by amending the pleadings³⁸. There is nothing in Order 6, Rule 15 which prevents the person verifying from saying that the whole plaint is upon information received and believed to be true³⁹. Under O. 6, R. 15 a *Munim Gomashta* having verbal authority can duly verify⁴⁰.

Costs—Court's Discretion.—Costs are solely a matter for the discretion of the court⁴¹, and as long as this discretion is judicially exercised it cannot be interfered with⁴². The mere fact that the court considers that the case is a hard one is not a sufficient ground for disallowing the costs of the plaintiff unless the plaintiff has committed some fault⁴³. Although it is within the court's discretion to allow or disallow costs, still the court is bound to pass an order with regard to costs⁴⁴. By sub-section (11) the Munsif has been authorised to award special costs, in case where he finds that the application by the landlord or the objection by the tenant was frivolous or vexatious.

Ejectment for non-deposit.—If a tenant to whom a notice under sub-section 3 of Section 7-B has been given does not on service of notice deposit the amount mentioned therein or file objections, the Munsif shall make an order directing his ejectment, inspite of the provisions of the Transfer of Property Act contained in Section 106 and 114-A, under which a notice to quit is necessary before a suit for ejectment can be filed. But if there is a contract, or local law or usage contrary to the above provisions, this sub-section will not affect them. Section 106 applies only in the absence of a contract to the contrary⁴⁵. A lease for a term certain, a perpetual lease, a lease for the life of the lessee, a tenancy-at-will etc., are all leases in which there is a contract to the contrary within the meaning of Section 106, T. P. Act. The question as to the nature of the tenancy or whether it involves a contract to the contrary are purely questions of construction depending on the facts and circumstances of each case. The contract to the contrary must be a valid contract, and must form part of the transaction of lease in question.

Non-deposit—Effect—When a tenant is served with a notice under sub-section (3) failure to make the deposit of the amount of rent mentioned in the notice renders a tenant's objection un-entertainable⁴⁶, and the court is bound to make an order under sub-section (5) of the section for the eviction of the tenant and for payment of the costs of the application. The court has no jurisdiction to grant extension of time for payment of arrears of rent beyond the time specified in the notice⁴⁷.

Section 7-B (7), Proviso.—This proviso lays down that the tenant should deposit the amount mentioned in the notice or furnish security to the satisfaction of the court. This is a condition precedent to the determination of any objection filed by the tenant. Whether the arrears were rightly claimed or not and whether in fact there were any arrears of rent due from the tenant are questions which may be determined only when the court embarks upon an inquiry, and this cannot be done unless the amount claimed was deposited in court or security given⁴⁸.

Payment to landlord, when effective.—Order 21, Rule 2 (3), C. P. C. lays down that a payment which has not been certified shall not be recognised by any court

38. *Ram Lohraya Mal v. Chandhal Singh Jaswant Singh*, 133 I C 626.
39. *Performing Right Society Ltd. v. Indian Morning Post Restaurant*, 1933 B 347.
40. *Bengal Jute Mills v. Jewraj Hiralal*, 1943 C 13=204 I C 191.
41. *Raliaram v. Governor-General*, 1946 C 249.
42. *Kunj Lal v. Hira Lal*, 1943 C 162; *Mohd. Ali v. Wajid Ali Khan*, 1940 Oudh 310=1940 O W N 281.
43. *Lalita Prasad v. Mieri Lal*, 1931

- O 9=7 O W N 1055.
44. *Hanna Estelle Dear v. Colin Macgregor Dear Murray*, 1933 P 135.
45. *Mukut Singh v. Misra Paras Ram*, 1924 A 724.
46. *Ram Lal Chaddha v. Hindustan Commercial Bank Ltd*, 1952 AWR 136.
47. *Dayal Das Gulrajam v. Shusila Devi Dividi*, 7 DLR (A) 96=1953 A 755.
48. *Ram Lal Chaddha v. Hindustan Commercial Bank*, 1952 AWR 136 (H C).

executing the decree. According to sub-section 9 of Section 7-B, the District Magistrate in carrying out an order sent to him for execution under sub-section 5, may use or cause to be used such force as may be necessary and nothing in the Code of Civil Procedure, 1908 shall apply to such proceedings. The word "such" is significant. It means "such" proceedings, as the District Magistrate may take for the eviction of the tenant, and cannot mean that the entire Code of Civil Procedure shall not apply. According to Section 36 of the Code of Civil Procedure the provisions of the Code, relating to the execution of decrees shall so far as they are applicable, be deemed to apply to the execution of orders. The heading to Order 21 also shows that it applies to execution of decrees and orders. This means that the provisions of Order 21, Rule 2 shall apply to the 'order' of the Munsif passed under sub-section (5) and any payment made to the landlord must be certified under Order 21, Rule 2, C. P. C. before it is recognised by the court executing the 'order' under sub-section 6.

Sufficient reason—Meaning.—This term has not been defined anywhere. Each case depends upon its own peculiar circumstances, and the court has to arrive at its own conclusion upon the facts of each case⁴⁹. The court must exercise a judicial discretion, and should not surrender its discretion to the dictation of parties⁵⁰. However, it should always be borne in mind that rules of procedure are not made for the purpose of hindering justice⁵¹.

Court-fee—And when payable—An application under Section 7-B (1) shall be for an order of ejection, but for the purposes of court-fee under sub-section (7) it shall be treated as a plaint in a suit for recovery of arrears of rent alone, and the court fee payable, shall calculated on the amount of arrears claimed. The court-fee is payable in the following circumstances only :—

- (a) The tenant deposits in court the amount mentioned in the notice issued to him under sub-section (3).
- (b) The tenant files objections other than an ejection as to costs of the proceedings.

Jurisdiction.—When an application under this section is converted into a suit, it is the Munsif, before whom the application was made, who has jurisdiction to try the suit for arrears of rent, as a special jurisdiction has been conferred on the Munsif to try such a suit. The provisions of the U. P. (Temporary) Control of Rent and Eviction Act override Section 16 of the Small Causes Courts Act⁵².

Such Proceedings—Meaning.—“Such” is defined by Webster as “having the particular quality or character specified.” “Proceedings” that are specified in this sub-section are proceedings for the eviction of the tenant, including the use of force. “Such proceedings”, therefore, must refer to the proceedings taken for the eviction of the tenant. The Code of Civil Procedure does not apply to these proceedings, but it does not mean that the Code has no application to all the proceedings under the Act. If the interpretation be otherwise, serious difficulties would arise. For example, under sub-section (6) the tenant pleads payment to the landlord, which the latter denies; there is nothing in the Act, how this controversy shall be decided.

Compensatory Costs.—If the Munsif finds that the application by the landlord or the objection by the tenant was frivolous or vexatious, it is obligatory on him to award special costs upto the amount of the claim. The word “shall” used in this sub-section is significant in contrast with the word “may” used in Section 35-A of the Code of Civil Procedure. However, an order for compensatory costs has to be passed only after giving a finding that the application or the objection was frivolous or vexatious⁵³. For the meaning “frivolous and vexatious” see *Parsi Hajra v. Bandhi Dhanuk*, 28 C 251.

Service by Registered Post—Effect.—See Section 27 of the U. P. General Clauses Act which lays down :—

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| 49. <i>Khushi Mohd. v. Mst. Barkat Bibi</i> , 1927 L 622. | 52. <i>Moti Ram v. Srimati Hasina Begum</i> , 1953 A 346=1953 A L J 77; <i>Bishambhar Dayal v. Girdhari Lal</i> , 1953 A 158. |
| 50. <i>Mauni Lal v. Shewbaran and others</i> , 1924 O 889 | |
| 51. <i>Inderjit Pratap Sahi v. Amar Singh</i> , 50 L A 183. | 53. <i>V. Swaynam Iyer v. Veriagu Ammal</i> , 1943 M 286. |

"Where any United Provinces Act authorises or requires any document to be served by post, whether the expression 'serve' or either of the expressions 'give' or 'send' or any other expression is used, then unless a different intention appears, the service shall be deemed to be effected by properly addressing, prepaying and posting by registered post, a letter containing the document, and unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post."

Landlord—Transferee—Effect.—The term *landlord* as used in sub-section (1) means a person in whom the title to the accommodation in question is vested for the time being. If he happens to be a person who has acquired the property after the date of its allotment to the tenant, he is as much entitled to maintain an application under this section as the original landlord was⁵⁴.

Appeal.—In case the application is treated as a suit an appeal would lie⁵⁵.

7-C. (1) When a landlord refuses to accept any rent lawfully paid to him by a tenant in respect of any accommodation the tenant may in the prescribed manner deposit such rent and continue to deposit any subsequent rent which becomes due in respect of such accommodation unless the landlord in the meantime signifies by notice in writing to the tenant his willingness to accept.

(2) Where any *bona fide* doubt or dispute has arisen as to the person who is entitled to receive any rent referred to in sub section (1) in respect of any accommodation, the tenant may similarly deposit the rent stating the circumstances under which such deposit is made and may until such doubt has been removed or such dispute has been settled by the decision of any competent Court, or by settlement between the parties, continue to deposit, in like manner, the rent that may subsequently become due in respect of such building.

(3) The deposit referred to in sub-section (1) or (2) shall be made in the Court of the Munsif having jurisdiction in the area where the accommodation is situate.

(4) On any deposit being made under sub-section (1) the Court shall cause a notice of the deposit to be served on the landlord, and the amount of deposit may be withdrawn by the landlord on application made by him to the Court in this behalf.

(5) When a deposit has been made under sub-section (2) the amount of the deposit shall be held by the Court for the benefit of the person who may be entitled to it and the same shall be payable to such person.

(6) In any case where a deposit has been made, as aforesaid, it shall be deemed that the rent has been duly paid by the tenant to the landlord.

Legislative changes.—New Section 7-C was added to the principal Act by U. P. Act XXIV of 1952.

Scope.—This section is meant to give relief against such landlords, who refuse to accept rent, or where there is a dispute about title. The tenant is authorised to deposit the rent in the Court of Munsif having jurisdiction in the area. The amount so deposited may be paid to the landlord on application by him.

Rules.—See Rule 9.

54. *Shri Sabd Saran v. Haji Moham-mad Zulfiqarullah*, 1954 A L J 194.

55. *Masharuddin v. Ramjimal*, 1954 A L J 708.

7-D. (1) No landlord shall without just or sufficient cause cut off or withhold any of the amenities enjoyed by the tenant.

(2) The tenant in occupation of an accommodation may, if the landlord has contravened the provision of this section, make an application to the District Magistrate complaining of such contravention.

(3) If the District Magistrate on inquiry finds that the tenant has been in enjoyment of the amenities and that they were cut off or withheld by the landlord without just or sufficient cause, he shall make an order asking the landlord to restore such amenities.

(4) If the landlord fails to restore the said amenities within the time fixed by the District Magistrate it shall be competent for the District Magistrate to direct that the tenant may have such amenities restored and the cost thereof may be deducted from the rent which is payable to the landlord.

Legislative Changes.—New Section 7-D was added to the principal Act by U. P. Act XXIV of 1952..

Scope.—This section is meant to prevent the landlord from harassing the tenant by cutting off or withholding any of the amenities enjoyed by the tenant, such as electricity, pipe-water, etc. If it is proved that the amenities have been cut off or withheld, the District Magistrate shall ask the landlord to restore them, and in case of failure allow the tenant to restore them at his costs, and deduct the amount from the rent payable to the landlord ⁵⁶.

Appeal, Revision or writ.—No appeal or revision is provided by the Act, and therefore none would lie. A writ however is not barred. If a District Magistrate intermeddles with the orders of the Rent Control and Eviction Officer, it would be without jurisdiction and the High Court can interfere by issuing a writ of certiorary or prohibition ⁵⁷.

7-E. (1) Every landlord shall be bound to keep the accommodation in the occupation of a tenant wind-proof and water-proof and to carry out other repairs which he is bound to make by law, contract or custom.

(2) In sub-section (1), repair includes annual whitewashing, recolouring and periodical repairs.

(3) If the landlord fails to carry out annual whitewashing, recolouring and periodical repairs, the tenant may by notice require him to carry out the same within one month from the date of notice. If the landlord fails to do so within the period as aforesaid, the tenant may himself carry out the same at a cost not exceeding one month's rent for the accommodation and deduct the amount from the rent.

(4) If the landlord neglects to carry out any repairs, other than annual repairs, which he is bound to make to the accommodation by law or contract, the tenant may apply to the Munsif having jurisdiction for an order to the landlord for carrying out the same. The Munsif shall cause a notice to be served on the landlord to appear and show cause, within such time as may be fixed, against the application.

(5) If the landlord does not appear in obedience to the notice or if he appears but fails to satisfy the Munsif as to why he should not be

56. *Brij Kishore v. The Rent Control and Eviction Officer*, 1954 A L J 172.

57. *Ram Chandra Saksena v. Kailash Kishore Verma*, 1955 A L J 198.

directed to carry out the repairs or such of them as he finds the landlord is bound to make, the Munsif shall direct him to carry out the same within a time to be fixed.

(6) If the landlord still fails to carry out the repairs in accordance with the direction under sub-section (5) the Munsif may require the tenant to submit an estimate of the cost of such repairs and after considering the estimates and taking such other evidence, as he may consider necessary, permit the tenant to carry them out at a cost not exceeding such amount as may be specified in the order and to recover such cost from the landlord. It shall thereafter be lawful for the tenant to make such repairs and to deduct the cost thereof from the rent or to recover it otherwise from the landlord as if it were a debt due to him by the landlord.

(7) No order for carrying out of repairs under sub-section (5) shall be made if the Munsif is satisfied that the repairs involved were due to the apparent and absolute fault of the tenant.

(8) No appeal shall lie from the order of the Munsif passed under sub-sections (5) and (6) which shall be final.

Legislative Changes.—New Section 7-E was added to the principal Act by U. P. Act XXIV of 1952. The sub-section (8) of this section has been substituted by U. P. Act XVII of 1954.

Scope.—This section is analogous to Section 108 (f) of the Transfer of Property Act. The landlord has to keep the accommodation wind-proof and water proof, has to carry out other repairs which he is bound to make by law, contract or custom. In other words, it is the legal duty of a landlord to keep the accommodation wind proof and water-proof, but as far as other repairs are concerned it has to be established that he is bound to carry them out under any law, contract or custom. In the absence of local custom or any stipulation to the contrary, a landlord is under no obligation to repair⁵⁸. The word "repairs" includes white-washing, recolouring and periodical repairs, and if the landlord is bound to carry them out, the tenant may give one month's notice to the landlord to carry them out, and on his failure, he may himself carry them out at a cost not exceeding one month's rent and deduct it from rent. In case of other repairs the tenant may apply to the Munsif, who may order the landlord to carry out the repairs within a certain time. If the landlord fails to carry out the repairs, the Munsif may require the tenant to submit an estimate of costs, and after due enquiry permit the tenant to carry out those repairs at his cost and recover them from the landlord. The tenant may deduct the costs from rent or recover them as a debt.

Repairs—Landlord's liability.—The liability of a landlord to repair the accommodation may be placed under the following two heads:—

- (1) to keep the accommodation wind-proof and water-proof—
- (2) to carry out other repairs, including annual white-washing, recolouring and periodical repairs, which he is bound to make by law, contract or custom.

It is the legal duty of a landlord to keep the accommodation wind-proof and water proof, but in order to make him liable for other repairs it has to be established that he is bound to carry them out under some law, contract or custom. There is nothing in the Transfer of Property Act or in any other law which imposes any duty on the landlord to keep the accommodation in good repairs or to spend any money on his property⁵⁹. In fact the tenant himself, in view of Section 108 (m), Transfer of Property Act, is bound to restore the property, on termination of lease in as good a condition as it was in at the time when he

58. *Lakhmichand v. Ratanbai*, 51 B 274.
59. *Bijoy Chandra Singh v. Howrah Amta Light Railway Co. Ltd.*,

1923 C 4; *Lakhmichand v. Ratanbai*, 1927 B 115 (118)=51 B 274.

was put in possession subject only to changes caused by reasonable wear or tear or irresistible force. This in a way, places on the tenant a qualified obligation to repair the house⁶⁰. In order to make the landlord liable for the repairs a contract or a custom has to be pleaded and proved by the tenant.

Annual repairs.—There is nothing in the Act to show what is meant by "annual repairs." In sub-section (1) the word "repairs" has been used, which according to sub-section (2) includes "periodical repairs". These repairs a landlord is bound to carry out, if there is any law, contract or custom to that effect. If a landlord fails to carry out these repairs, the tenant can take action under sub-section (3). Reading sub-sections (1), (2) and (3) together it appears that periodical repairs along with annual white-washing and recolouring have been classified as annual repairs.

Rules.—See Rule 10.

Appeal.—No appeal would lie against orders passed under sub-section (5) or (6). Previous to the amendment of sub-section (8) there was a provision of appeal, and therefore appeals filed prior to the amendment shall be heard and decided in view of the provisions of Section 6 of the U. P. General Clauses Act.

Revision.—Similar words have been used in Section 23 (2) U. P. Agriculturists' Relief Act. In interpreting these words it has been held, that they do not exclude a revision⁶¹. The same view has been taken in another case⁶².

7-F.—The State Government may call for the record of any case granting or refusing to grant permission for the filing of a suit for eviction referred to in section 3 or requiring any accommodation to be let or not to be let to any person under Section 7 or directing a person to vacate any accommodation under Section 7-A and may make such order as appears to it necessary for the ends of justice.

Legislative changes.—New Section 7-F was added to the principal Act by U. P. Act XXIV of 1952 and in it the words "or directing a person to vacate any accommodation under Section 7-A" have been added by U. P. Act XVII of 1954.

Scope.—This section empowers the State Government to interfere with the following orders:—

- (a) Orders granting or refusing to grant permission for the filing of a suit for eviction under Section 3.
- (b) Orders requiring any accommodation to be let or not to be let to any person under Section 7.
- (c) Orders directing a person to vacate any accommodation under Section 7-A.

Writ—Alternative Remedy.—This section does not afford any alternative remedy, and cannot be said to bar a petition for writ. It merely empowers the State Government to call for the record and make suitable orders, and also does not give any right to the applicant to approach the State Government to revise the order passed by the Rent Control and Eviction Officer⁶³.

State Government.—An application under this section shall be made to the State Government through the Secretary, Food and Civil Supplies Department, who is authorised to call for the record.

7-G.—(1) For purposes of any inquiry under this Act, the District Magistrate may—

60. *Lakshminichand v. Rantanbai*, 1927 B 115; *Bai Moghibai v. Doodjersey Lakhimdas*, 1917 B 115.
61. *Lulta Singh v. Sridhar Shukul*, 1942 O 404.
62. *Kazanchi Prasad v. Babu Ram*, 1949 A 559=1949 A W R 159.
63. *Brij Kishore v. The Rent Control*

and Eviction Officer, 1954 A L J 179=1954 A 428=1954 A W R 158 (H C); See also *Narottam Saran v. Government of the State of U. P.*, 1954 A 232; *Mahabir Prasad v. District Magistrate Kanpur*, 1955 A L J 262.

- (a) enter, inspect or authorise any officers subordinate to him to enter and inspect any accommodation at any time between sunrise and sunset ; or
- (b) by written order require any person to produce for his inspection such rent receipts, books or other documents relevant to the enquiry at such time and at such place specified in the order :

Provided that no premises shall be entered under clause (a) without the consent of the occupier, unless at least 24 hours' previous notice in writing has been given.

(2) The District Magistrate shall in so far as such powers are necessary for carrying out the different provisions of this Act, have power to summon and enforce the attendance of witnesses and to compel the production of documents in so far as may be in the same manner as is provided in the case of a Court under the Code of Civil Procedure, 1948.

Scope—This section merely gives certain powers to the District Magistrate, necessary for making an inquiry under the Act.

8. Penalty.—(1) Any person who contravenes any of the provisions of this Act, or any order made in pursuance thereof, shall be punishable on conviction with simple imprisonment for a term which may extend to six months or with fine upto Rs. 5,000/- or with both.

(2) Where a person has been convicted for contravention of the provisions of Section 4, the Magistrate by whom the case is heard may direct that out of the fine, if any, imposed and realized from the person so convicted, an amount not exceeding the amount paid as premium or as additional payment over and above the rent for admission as a tenant to any accommodation, may be paid to the person by whom such payment was made :

Provided that any amount paid to the person aforesaid under this section shall be taken into account in awarding compensation to such person in any subsequent claim for compensation or restitution on account of the amount realised in contravention of Section 4.

(3) Notwithstanding anything contained in Section 32 of the Criminal Procedure Code, 1898 it shall be lawful for a Magistrate of the First Class trying any case under this Act, to pass a sentence of fine not exceeding five thousand rupees.

Legislative changes.—The original Section 8 has been substituted by a new Section 8 vide U. P. Act XVII of 1954.

General.—This section provides punishment for the contravention of any of the provisions of the Act or any order made in pursuance thereof. Penal Laws have to be strictly construed. This means that the language shall be so construed that no case shall be held to fall within it which do not fall both within the reasonable meaning of its terms and within the spirit and scope of the enactment⁶⁴. If the legislature has not used words sufficiently comprehensive to include within its prohibition all the cases which fall within the mischief intended to be prevented it is not competent to a court to extend them⁶⁵. The rule of strict construction, however, whenever invoked, comes attended with qualifications and other rules no less important and it is by the light which each contri-

64. 80 L J K B 810.

65. *Proctor v. Manwaring*, 3 B and Ald. 145.

butes that the meaning must be determined ⁶⁶. Among them is the rule that that sense of the words is to be adopted which best harmonises with the context, and promotes in the fullest manner the policy and object of the legislature. The paramount object is to ascertain the legislative intent ; and the rule of strict construction is not violated by permitting the words to have their full meaning or the more extensive of the two meaning, when best effectuating the intention. The effect of the rule of strict construction might almost be summed up in the remark, that when an unequivocal word or ambiguous sentence leaves a reasonable doubt of its meaning which canons of interpretation fail to solve, the benefit of doubt should be given to the subject and, against the legislature which has failed to explain it. ⁶⁷ Where under an Act certain things are required to be done before any liability attaches to any person of any right or obligation, it is for the person who alleges that the liability has been incurred to prove that things prescribed in the Act have been actually done ⁶⁸. A conviction under an Eviction Order made by a District Magistrate under the Defence of India Rules cannot be upheld if no copy of such order is filed, and there is no legal proof of such an order ⁶⁹. See also comments under Section 9.

Contravention of order.—This section makes punishable the contravention, not only, of any of the provisions of the Act, but also of any order made in pursuance thereof. These orders included an order made under clause (bb) of sub-rule (2) of rule 81 of the Defence of India Rules in respect of any of the matters specified in or under this Act, so far as it could validly have been made by the provincial Government or the District Magistrate. The expression "in contravention of the provisions of this Act" was interpreted ⁷⁰ to mean "otherwise than in accordance with the provisions of the Act." In interpreting the provisions of the U. P. Cotton Cloth and Yarn Control Order, 1943, it was held that, in case of contravention it was not a good defence that the manufacturer, selling agent, wholesale dealer or retailer was not himself present when the provision of law was contravened ; the duty was upon him and it was for him to see that the duty was properly performed as required by law ⁷¹. Persons contravening the order cannot be discharged on the ground that they had no knowledge of the order. Absence of knowledge is no defence to a prosecution for breach of the order, it may be a mitigating circumstance ⁷². Once a law is duly passed and promulgated, a subject commits a breach of it at his own peril. But the order contravened against has got to be proved by the prosecution like any other fact. In the absence of an order, contravention whereof is made the basis of the prosecution, the accused cannot be punished under this section ⁷³.

Licensee leaving—Effect.—When a tenant reserves the premises for the use of his staff and allows them to live in it so long they are in his service, without payment of any rent there is no relationship of landlord and tenant and if on the termination of services another servant was allowed to occupy it, there was no offence under the Act ⁷⁴.

Contravening Acts.—The following may be enumerated as acts contravening the provisions of this Act,—

(1) Filing a suit, without the permission of the District Magistrate, in any Civil Court against a tenant for his eviction from any accommodation except on one or more of the grounds mentioned in clauses (a) to (f) of Section 3.

(2) Taking any premium or any other additional payment of any sort over and above the rent fixed for the admission of a tenant to any accommodation. Payment of Municipal taxes in addition to rent is not a premium ⁷⁵.

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| <p>66. <i>U. S. v. Hardwell</i>, 6 Wallace 395.</p> <p>67. <i>Secretary of State for India v. Scoble</i>, (1903) A C 299; <i>Hull Dock Co. v. Browne</i>, 36 R R 459.</p> <p>68. <i>Shakoor Hasan v. Emperor</i>, 1944 N 40 (42, 43).</p> <p>69. <i>Kashi Prasad v. Rex</i>, 1948 A W R 253.</p> <p>70. <i>Shri Ram Chanderji v. Raghunath</i>, 18 R D 426.</p> | <p>71. <i>Gillumal v. King Emperor</i>, 1946 A L J 143.</p> <p>72. <i>Crown v. Lilaram Vaparimal</i>, 221 I C 616.</p> <p>73. <i>Kashi Prasad v. Rex</i>, 1949 A 249 = 1948 A W R 252 (H C) = 1948 O W N 313.</p> <p>74. <i>Hari Charan Halwasiya v. The State</i>, 1951 A 442.</p> <p>75. <i>Someshwar Dayal Seth v. Dwarka-dish Maharaj</i>, 1950 A 61 = 1949 A L J 461.</p> |
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6. 7-G } U. P. (TEMP.) CONTROL OF RENT AND EVICTION ACT, 1947 709

(2) Landlord omitting to give intimation that any accommodation of which he is the landlord is or has fallen vacant⁷⁶. The question whether the accommodation is required for personal use is immaterial⁷⁷.

(4) Landlord letting out the accommodation to any person in contravention of the order of the District Magistrate. But where no order requiring a landlord to let out the house to a particular person is passed within the prescribed period, it is open to the landlord to let it out to anyone and he cannot be held liable for letting the house without permission⁷⁸. Where a previous tenant lets a person into occupation without the landlord's consent the fact that he was not bodily turned out by the landlord cannot be treated as landlord's consent and the landlord commits no crime⁷⁹.

(5) Landlord not letting out the accommodation to a person to whom it has been allotted by the District Magistrate.

(6) Tenant omitting to give intimation in writing to the District Magistrate or such officer as the District Magistrate may appoint in this behalf, within seven days of his vacating any accommodation, the vacancy of which is required to be reported under an order passed by the District Magistrate, under Section 7 (1) (a), that he has vacated the accommodation. Tenant here seems to mean tenant, who has sub-let and is therefore a landlord within the meaning of Section 2 (c).

(7) Tenant omitting to give intimation in writing to the District Magistrate or such officer as the District Magistrate may appoint in this behalf, within seven days of his vacating any accommodation occupied by him that he has vacated the accommodation. Tenant here would also mean a sub-tenant.

(8) A prospective tenant omitting to pay to the landlord an advance of rent in accordance with an order of the District Magistrate made under Section 7(2).

(9) Attempt and abetment of contravention of an order made or deemed to be made under the Act is also punishable, and shall be deemed to be a contravention of that order—Section 11.

(10) Enhancement of rent beyond the limits prescribed by Section 80.

(11) A person omitting to vacate inspite of the orders of the District Magistrate under Section 7-A (2).

(12) A landlord refusing to restore amenities inspite of orders under Section 7-D (3).

(13) A landlord refusing to carry out repairs inspite of orders under Section 7-E (5).

(14) A person refusing to produce receipts, books or other documents for inspection, inspite of orders under Section 7-G (1) (b).

Publication in Gazette—Effect.—It was held that publication in the *Gazette* of an order under Rule 81, cannot be deemed to convey good and effective notice⁸¹, but this matter was reconsidered by a Full Bench of the Allahabad High Court and it has been held that once publication has been made the persons affected by the order are to be deemed to have been informed and when a person is deemed to have been informed it is not open to him to show that he was not actually informed⁸². Under Section 119, Defence of India Rules there may be either actual information or constructive information and either is equally effective.

Punishment.—The section does not authorise the Magistrate to pass sentence of rigorous imprisonment. Any contravention of any provisions of the

76. *Rex v. Nensukh Das*, 1949 A W R

76.

77. *Ibid.*

78. *Kashi Prasad v. Rex*, 1949 A 249.

79. *D. P. Halwasia v. State*, 1953

A 45.

80. *Kale Khan v. Rex*, 1950 A L J
640=1950 A 417.

81. *Brij Nath v. Emperor*, 1946 A W R
525.

82. *Debi Prasad v. Emperor*, 1947
A W R 48.

Act or any order made in pursuance thereof is punishable with simple imprisonment⁸³.

Appeal.—There is no bar to an appeal, under the provision of Act III of 1947 and therefore the general provisions of the Code of Criminal Procedure shall apply. Any person convicted under Section 8 of Act III of 1947, can appeal under Section 408, Criminal Procedure Code, subject to the provisions of Sections 412 to 415-A of the Code⁸⁴.

Revision—A revision is also maintainable under Sections 437 and 439 Code of Criminal Procedure.

9. Continuance of orders made under Defence of India Rules.—Every order made under clause (bb) of sub-rule (2) of Rule 81 of the Defence of India Rules in respect of any of the matters specified in or under this Act shall so far as it could validly have been made by the State Government or the District Magistrate, continue in force and be deemed to have been made under this Act until it is superseded or modified by a competent authority under this Act and all orders made and directions given under any such order shall also continue in force until superseded or modified by a competent authority.

General.—An order under clause (bb) of sub-rule (2) of rule 81 of the Defence of India Rules shall continue and be deemed to have been made under this Act in the following circumstances—

- (a) The order must be in respect of any of the matters specified in or under this Act.
- (b) The order could validly have been made by the State Government or the District Magistrate.

Rule 81 (2), clause (bb) is given below for facility of reference:—

"The Central Government or the Provincial Government, so far as appears to it to be necessary or expedient for securing defence of British India or the efficient prosecution of the war, or for maintaining supplies and services essential to the life of the community, may by order provide—

- (bb) for regulating the letting and sub-letting of any accommodation or class of accommodation, whether residential, or non-residential, whether furnished or unfurnished and whether with or without board, and in particular—
 - (i) for controlling the rent of such accommodation either generally or when let to spacial persons or classes of persons or in specified circumstances,
 - (ii) for preventing the eviction of the tenants and sub-tenants from such accommodation in specified circumstances, and
 - (iii) for requiring such accommodation to be let either generally, or to specified persons or classes of persons or in specified circumstances."

Order under Rule 81—When Valid.—Any order passed by the District Magistrate under Rule 81 cannot bind the person concerned unless it is published in accordance with Rule 119, which lays down an obligation on the officers making the order to publish notice of such order. The manner in which such notice is to be published is, no doubt, left to the discretion of the officer. It must be shown that the officer, making the order, himself prescribed the manner of its publication and that the publication was made in that manner⁸⁵. Mere publication in the *Gazette* cannot be deemed to convey good and effective notice⁸⁶. But where an order passed by an authority has been published by it in the *Official Gazette*,

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| 83. <i>Kashi Prasad v. Rex</i> , 1949 A 249
—1948 A W R 253 (H C)—1948
O W N 343. | 85. <i>Shakoor Hasan v. Emperor</i> , 1944
N 40 (42, 43). |
| 84. <i>Hari Charan Halwasiya v. The State</i> , 1951 A 442—1950 A W R
676 (H C). | 86. <i>Baij Nath v. Emperor</i> , 1946 A W R 525; <i>Debi Prasad v. Emperor</i> ,
1947 A W R 46. |

it may be presumed that it was aware of the provisions of Rule 119 of the Defence of India Rules and that the publication was made in the considered compliance with all its provisions, including the provisions as to the determination, the most suitable form of publication ⁸⁷. Before a District Magistrate can deal with the matter under Rule 81 (2) (bb) (ii) it is necessary for him to see whether the conditions mentioned in the earlier part of sub-rule (2) have been satisfied; that is to say, it is essential for him to be satisfied that it is necessary or expedient to make the kind of the order that he contemplates, and when he is so satisfied, he will be competent to deal with the application before him and make an order under clause (bb) (ii) of sub rule (2). If none of the conditions appearing in sub-rule (2) are satisfied, the order of the District Magistrate must be held to be without jurisdiction ⁸⁸.

Section 2 (1) and Rule 81.—If ultra vires.—Section 2 of the Defence of India Act is not *ultra vires* and also Rule 81 (2) (bb) which is within Section 2 (1) of the Act ⁸⁹.

Permission of Ejectment—Effect.—A tenant can be ejected on grounds other than those mentioned in clauses (a) to (f) of Section 3 only with the permission of the District Magistrate. If this permission was obtained before the Act came into force under Rent Control Order passed by the District Magistrate under Rule 81 of the Defence of India Rules, it would be effective and no fresh permission under the Act would be needed, as this permission shall be deemed to have been given under this Act.

10. Effect of orders inconsistent with other enactments.—Any order made or deemed to be made under this Act shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or any instrument having effect by virtue of any enactment other than this Act.

General.—This section is based on the general principle of interpretation *generalia specialibus non derogant*. The general law of the country is to prevail, in the absence of any special law to the contrary. But if there is any such law, then the principle *generalia specialibus non derogant* (general things do not derogate from special) is to be applied ⁹⁰. For example, assignability or transferability is the inherent characteristic of an normal contractual tenancy, and has been recognised by the Transfer of Property Act, but Section 3 (e) of Act III of 1947 lays down as one of the grounds of eviction that the tenant has on or after the 1st day of October, 1948 sub-let the whole or any portion of the accommodation without the permission of the landlord. This special provision in Section 3 (e) of Act III of 1947 shall prevail against the general law contained in the Transfer of Property Act. This principle has been extended to the orders made or deemed to be made under this Act. Such orders shall be effective even though they are inconsistent with anything contained in any enactment or any instrument having effect by virtue of such enactment. The orders must not, however, be inconsistent with anything contained in Act III of 1947, as such orders shall be deemed to be ineffective.

Can Execution be refused.—Where a co-owner of a house sued for partition of a house and a decree was passed; he applied for the execution of decree. This execution could not be refused on the ground that the execution of decree would have the effect of virtual ejection of the tenant in occupation of the house ⁹¹.

11. Attempts etc. to contravene orders.—Any person who attempts to contravene, or abets a contravention of any order made or deemed to be made under this Act shall be deemed to have contravened that order.

87. *Raj Bahadur v. Emperor*, 1948 A W R 428; *Bala Prasad v. Emperor*, 1946 A W R 432; *Debi Prasad v. Emperor* 1947 A W R 46.
88. *Motichand Balubhai v. District Magistrate*, Surat, 1945 B 385 (386).
89. *Haveliram Shetty v. Maharaja of*

- Morvi*; 1945 B 88.
90. *Municipal Board, Lucknow v. S. C Deb*. 9 O W N 461 (466); *Mohd. Aziz Khan v. Mumtaz Ali Khan*, 8 O W N 1207.
91. *Shamsunnissa v. Latafat Husain*, 1950 A 688=1950 (A W R 654 (H C)).

General.—This section lays down that an attempt to contravene or an abetment to contravene any order shall be deemed to be a contravention of that order. Section 8 punishes the contravention of any of the provisions of this Act or any order made in pursuance thereof. In Section 11 there is an omission of "any of the provisions of this Act", and it seems that an attempt to contravene or an abetment to contravene "any of the provisions of the Act" would not be punishable.

Abetment.—It has been defined in Section 107, Indian Penal Code. It involves active complicity on the part of the abettor at a point of time prior to the actual commission of the offence, and it is of the essence of the crime of abetment that the abettor should substantially assist the principal culprit towards the commission of the offence. Abetment is a separate and distinct offence provided the thing abetted is an offence⁹². Abetment does not in itself involve the actual commission of the crime abetted. It is a crime apart⁹³. If no one commits an offence nobody else can be said to abet that offence⁹⁴. As a general rule a charge of abetment fails if the substantive offence is not established against the principal. But see *Umadasa v. K. E.*, 52 C 112. Abetment consists of three ingredients (1) instigating a person to commit an offence; or (2) engaging in a conspiracy to commit it; or (3) by intentionally aiding a person to commit it⁹⁵.

Attempt.—An attempt to commit a crime is an act done with intent to commit that crime, and forming part of a series of acts which would constitute its actual commission if it were not interrupted. The point at which such a series of act begins cannot be defined; but depends upon the circumstances of each case. All offences may be viewed from four distinct stages; (i) intention, (ii) preparation (iii) attempt and (iv) completed act. Ordinarily, law allows *Locus Poenitentiae* only upto second stage, after which it regards the development of the scheme as to far advanced to remain unpunished. This has led to an important question as to when the preparation ends and an attempt begins. For instance where a married woman entered the shop of the accused with a view to have sexual intercourse, and the shop was immediately afterwards besieged, it was held that the act done amounted only to preparation or providing an opportunity, being a stage of the proceeding short of attempt which is not punishable by law⁹⁶. This case followed an earlier precedent in which the accused, who was a member of the Municipal Committee of a town, had a woman brought into the committee room for cohabitation, with whom he intended to pass the night, but before he had sexual intercourse with her, her husband surprised them whereupon the court held that the accused had not proceeded beyond the stage of preparation. If A wishes to pick B's pocket, the fact that he was seen shadowing him is too remote, and so is the fact that he lifted the tail of B's coat to ascertain if there was anything in the pocket, but if with the same object A puts his hand into B's pocket then it is clearly an attempt even though the pocket be empty⁹⁷.

Deemed to be made.—**Meaning.**—“Orders deemed to be made under this Act,” would include all those orders that were made under clause (bb) of sub-rule (2) of Rule 81 of the Defence of India Rules (vide Section 9 of Act III of 1947).

12. Offences by Corporations.—If the person contravening an order made or deemed to be made under this Act is company, partnership, firm or other body corporate every director, partner, manager, secretary or other officer or agent or the managing agents thereof shall unless he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent such contravention, be deemed to be guilty of such contravention.

Company—Meaning.—Defined in Act XVIII of 1891, Section 2; Act VII of 1915, Section 2; Act XI of 1922, Section 2. It means an association of a number of individuals for the purpose of carrying on trade or other legitimate business;

- 92. *Seeha Ayyar v. Venkatesubbu, Chetty*, 1924 M 487.
- 93. *Barendra Kumar Ghosh v. K. E.*, 51 I A 40=52 C 196.
- 94. *Abdul Karim v. K. E.*, 6 Luck

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| <ul style="list-style-type: none"> 95. <i>Imandi Bhooyah</i>, 21 W R (cr) 8. 96. <i>Paira Ram v. K. E.</i>, (1902) P. R. 2^r. 97. <i>Brown</i>, 24 Q B D 357. | <p style="text-align: center;">358.</p> |
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a number of persons united for the purpose, or in joint concern for profit; as a company of Merchants; private partnership or incorporated bodies of men; firm, house or partnership; or a corporation. "Company" means a company formed and registered under the Companies Act or an existing Company Act, VII of 1913, Companies Act, Section 2, clause (2). In its wider connotation the expression means any association or collection of individuals having some object in common.

Firm—Meaning.—Persons who have entered into partnership with one another are called collectively "Firm"⁹⁸. Persons making an agreement to carry on money-lending business and share the profits therefrom, are partners and constitute a firm⁹⁹.

Partnership—has been defined in Section 4 of the Indian Partnership Act, IX of 1932 :

"Partnership" is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all. Persons who have entered into partnership with one another are called individually "partners" and collectively "a firm".

A company has to be distinguished from a partnership. The chief differences between a company and a partnership are : (1) The liability of partners for the debt of the firm is unlimited, while in the case of companies, limited by shares; (2) the partners of a firm have a right to take part in the business of a firm, but the members of a company have no such right and the carrying on of the business of the company is entrusted to a select body called the Board of Directors; (3) the death of a partner or the assignment of his interest dissolves the partnership but in the case of company even though a member dies, the concern is not dissolved but his legal representative steps into the shoes of the dead member; (4) each partner is the agent of the firm and binds it by transactions entered into on its behalf within the scope of the business of the firm but a member of the company cannot bind the company by his act; (5) a partner can sue his fellow partners, but a member of a company cannot sue his brother members unless they are guilty of fraudulent or *ultra vires* acts; (6) a company has personality distinct from that of the members composing it.

Director—Meaning.—“Director” includes any person occupying the position of a director by whatever name called—Section 2, Indian Companies Act.

Manager—Meaning.—“Manager” means a person who subject to the control and direction of the directors has the management of the whole affairs of a company, and includes director or any other person occupying the position of a manager by whatever name called and whether under a contract of service or not—Section 2 (9), Indian Companies Act. This definition makes it clear that the persons who are not entrusted with the management of the whole affairs of a company are not comprehended within the term “manager” for example, the manager of a local branch of bank having many branches is not a “Manager” within the definition¹.

Officer—Meaning.—“Officer” includes any director, managing agent, manager or secretary but save in Sections 235, 236 and 237 does not include an auditor—Section 2 (11), Indian Companies Act. Sections 235, 236 and 237 of the Indian Companies Act deal respectively with misfeasance, falsification of books and prosecution of officers.

Agent—Meaning.—Defined in Act 9, 1872, Sections 182, 104; Act 9 of 1874, Section 32; Act 8 of 1901, Section 5 (1) (a); Act 8 of 1901, Section 3 (a); U. P. Act 3 of 1892, Section 23 (2).

“Agent” is a person employed to do any act for another or to represent another in dealings with third persons—Act 9 1872 (Contract Act). In the Indian Companies Act, “agent” in relation to a company for the purposes of sub-section (2) of Section 141-A of that Act shall be deemed to include the bankers and legal advisors of the company and any person employed by the company as auditors, whether those persons are or are not officers of the company.

98. Indian Contract Act, Section 239; Indian Partnership Act, 1932, Section 4.
99. Gokaldas Ram Pratap Marwadi v.

- Kasheorao Janurao, 1937 N 134.
1. Basant Lal v. Emperor, 19 Or, L J 215=53 I C 791; Gibson v. Barton, 10 O B 389=32 L T 396.

Managing Agent—Meaning.—‘Managing Agent’ means a person, firm or company entitled to the management of the whole affairs of a company by virtue of an agreement with the company, and under the control and direction of the directors except to the extent, if any, otherwise provided for in the agreement and includes any person, firm or company occupying such position by whatever name called.

Explanation.—If a person occupying the position of a managing agent calls himself a manager he shall nevertheless be regarded as managing agent and not as manager for the purposes of the Indian Companies Act—Section 2 (9-A), Indian Companies Act.

Corporation—Meaning.—Artificial persons established for prescribing in perpetual succession certain rights, which if conferred on natural persons, would fail in process of time. In the words of Chief Justice Marshall, “A corporation is an artificial being, invisible, intangible and existing only in contemplation of law.”

Secretary—Meaning.—Defined in Act 5, 1873, Section 3; Act 11 of 1876, Section 3; Act 5, 1888, Sections 4 (8) and 50 (4). It means one entrusted with the management of business. The Secretary of a corporation is one of the general managing agents of the company.

13. Protection for action taken under the Act.— 1) No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done in pursuance of any order made or deemed to be made under this Act.

(2) No suit or other legal proceeding shall lie against the State Government for any damage caused or likely to be caused by anything which is in good faith done or intended to be done in pursuance of any order made or deemed to be made under this Act.

Good Faith—Meaning—“Good faith” has been defined in Section 4 (17), U. P. General Clauses Act: “A thing shall shall be deemed to be done in ‘good faith’ where it is in fact done honestly, whether it is done negligently or not.” It means honesty of dealing². These words have no technical legal signification, but are to be taken in their ordinary acceptation and mean simply honesty in belief, purpose or conduct³. In interpreting the provisions of Section 51 of the Transfer of Property Act it has been held that where a man has consciously avoided making an enquiry on any matter, he may nevertheless be said to have a belief on that matter, but that belief would not be a belief in good faith⁴. In the case⁵ noted at the footnotes referred to in another case⁶, Blackburn J, observed as follows: “It has long been decided that such a provision as that contained in this section is intended to protect persons from consequences of committing illegal acts which are intended to be done under the authority of an Act of Parliament, but which, by some mistake are not justified by the terms and cannot be defended by its provisions..... I agree that if a person knows that he has not, under a statute, authority to do a certain thing, and yet intentionally does that thing, he cannot shelter himself by pretending that the thing was done with intent to carry out the statute.” No protection can be given to a person who has acted knowingly and intentionally in contravention of the enactment using it as a cloak for private purposes⁷. Under Section 52, Indian Penal Code “nothing is said to be done or believed in good faith which is done without due care and attention.” This is a stricter definition than the one adopted in Section 4 (17), U. P. General Clauses Act. It, therefore, follows that while an honest blunderer acts in good faith within the meaning of the General Clauses Act, he can never act in good faith within the meaning of the Indian

2. *Nannu Mal v. Ram Chander and others*, 1831 A 277.
3. Cf. *Butcher v. Stead* (1875) L R 7 H L 839; *In re Avery*, (1887) 56 Ch. D 307; *Ex parte, Watson* (1888) 21 Q B D 301.
4. *Abhay Churn Ghose v. Attorney Dassee*, 13 C W N 931.

5. *Selman v. Judge*, 6 Q B 724=19 W R 110.
6. *Ranchordas Mooraji v. The Municipal Commissioner for the City of Bombay*, 25 B 387.
7. *Shiam Lal v. Abdul Rauf*, 1935 A 538 (540, 551).